AN ANALYSIS OF THE LITIGATION PERTAINING TO CERTAIN SPECIFIC ASPECTS OF PUPIL CONTROL IN THE PUBLIC SCHOOLS

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CHAPTER I

DESCRIPTION OF THE STUDY

> The law is never static: it is in a state of constant flux. In fact, if one word were all that was allowed to characterize the law since 1941, that word might well be "change." ...If there was a central theme throughout the period, it was the role of the government in relation to each individual citizen. The role of law is to adjudicate between society...all of us...on the one hand, and each one of us...as individuals...on the other. In 1941, the rule was simple: the greatest good to the greatest number. Whether that still is the rule in 1966 may be a subject for speculation.[1]

School administrators, teachers, board of education members and professors of education are becoming increasingly aware of the importance of a basic knowledge of the legal aspects of public school education. In this regard, Newton Edwards,[2] a recognized authority in education and school law, makes the following statement:

> In order to deal intelligently with many of the aspects of school administration, boards of education, superintendents, and principals should be familiar with the principles of law which govern their action. Moreover, those who undertake to formulate fundamental principles of educational policy should know something of the place the school occupies in legal

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[1] Chester M. Nolte, "The Law: An Anchor or a Sail," American School Board Journal, CLIII (November, 1966) p. 48.

[2] Newton Edwards, The Courts and the Public Schools (Chicago, 1955) p. 9.

> theory. The relation of the school to civil society on the one hand, and to the individual on the other, is nowhere so well defined as in the great body of decisions rendered by the highest of our state and federal courts. It would seem obvious that both the educational statesman and the practical school administrator should be familiar with the fundamental principles of law governing the operation of our system of public education.

Another authority, Edward C. Bolmeier,[3] contends:

> The growing importance of school law is reflected by the growing interest in school law. ...Deep and broad interest in school law abounds. School officials, school employees, and others connected with the public schools want at least to understand the basic elements of school law. There is considerable evidence of the growing interest in school law, particularly that which is based upon judicial decisions.

Drury and Ray[4] simply state that, "A knowledge of school law is basic to the education of any teacher; for the well prepared school administrator, it is indispensable."

One of the necessary and basic functions of school authorities is that of pupil control. The administration and control of the pupil personnel in our public schools give rise to many important problems that involve all who are concerned with elementary and secondary education. Inasmuch as the pupil represents the center of the educational system, the manner in which these problems are met has a direct influence on the effectiveness of the total school program.

Litigation in the area of pupil control is by no means new, however, in recent years there has been an increase in the number of

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[3]Warren E. Gauerke, School Law (New York, 1965), p.v. Foreword by Edward C. Bolmeier.

[4]Robert L. Drury and Kenneth D. Ray, Principles of School Law (New York, 1965), p.v.

cases in this area. These cases have important implications for those persons charged with the responsibility for leadership in the public schools of our country.

Statement of the Problem

This study will attempt to identify some of the more significant problems related to pupil control in the public schools that have come before the courts for litigation during the past twenty-five years. These cases will be reviewed and analyzed to discover the implications of the courts' decisions for those involved in public school education.

Need for the Study

Those concerned with the educational program recognize the necessity for adequate pupil control in order to accomplish the purposes for which the school exists. Without proper control, anarchy and pandemonium would reign, and our schools would be ineffective, to say the least. Sorenson,[5] commenting on this subject, stated:

> School exists for the education of children and youth. Teachers are given the responsibility for directing the learning of pupils. Without order little teaching and learning is likely to occur. The maintenance of reasonable discipline is absolutely essential.

Within constitutional limits state legislatures have plenary authority with respect to matters of policy for school control. Statutes, however, are usually very general in matters dealing with the control of pupils. Actually, much of the legislation is permissive in

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[5]Helmer E. Sorenson, "Pupil Discipline and Control," The Oklahoma Teacher, XLIX (September, 1967) p. 24.

nature, thereby delegating to school districts the authority and responsibility to legislate the specifics of pupil control. The local boards of education, in turn, often delegate this authority to the professionally trained school personnel on its staff.

Referring to American Jurisprudence we find an elaboration of the principles mentioned above:

> In discharging the duties imposed upon them by statute, school directors have the power to make rules and regulations pertaining to schools and pupils. ...There is no necessity that all the rules, orders, and regulations for the discipline, government, and management of the schools shall be a matter of record by the school board or that every act, order, or direction affecting the conduct of the school shall be authorized or confirmed by a formal vote. It is recognized that no system of rules, however carefully prepared, can provide for every emergency or meet every requirement. In consequence much must necessarily be left to the superintendents of, and the teachers in the several schools.[6]

It becomes obvious, then, that because of this delegation of powers and lack of specific legislation, much of the decision making authority is left to the administrators and teachers. The need for a basic knowledge of the legal aspects of pupil control to aid them in reaching these decisions is evident.

It is only natural that the actions or aspirations of the pupils will often collide with the statutory provisions or with the rules and regulations of school officials, administrators, and teachers. When the restrictions placed upon the pupils appear to be unnecessary or unreasonable, the pupil or his parent is privileged to stand up for his legal rights by challenging the action in court.

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[6] 47 American Jurisprudence 326.

Innumerable situations exist in the public schools where certain types of regulations are considered to be reasonable and necessary by some and unreasonable and unnecessary by others. Virtually all of these situations are controversial and fraught with potential litigation. When the disagreement reaches the stage of litigation, the courts determine reasonableness of the rules and regulations and the methods used to enforce them. Ultimately, then, final authority rests with the courts.

The courts invariably apply the test of reasonableness in determining whether or not school personnel have exceeded their legal authority in the particular matter before them for litigation. American Jurisprudence states this principle in the following manner:

> ...They (the courts) will not consider whether regulations are wise or expedient, but merely whether they are a reasonable exercise of the power and discretion of the board. The reasonableness of regulations is a question of law for the courts....[7]

The distinction between whether an issue questions the reasonableness of a regulation or whether it questions the wisdom of the regulation is sometimes extremely difficult for the courts to determine. "Reasonable" is defined in Black's Law Dictionary as: "just; proper; ordinary or usual; fit and appropriate to the end in view." Webster defines "wise" to mean, "discerning and judging soundly concerning what is true or false, proper or improper; discreet."

The decision of the courts to pass upon a matter or refuse to do so, based upon reasonableness is not always a fundamental one.

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[7] Ibid., p. 328.

In some cases it may depend upon the liberality of the particular court in the interpretation of its jurisdiction. Commenting on this situation, Remmlein[8] states:

> The line of demarcation between reasonableness and wisdom is sometimes shadowy; the difference may appear to be only a matter of terminology. The courts never violate the principle that they have jurisdiction to decide whether a rule is wise or unwise. Nevertheless, one court may refuse to review a rule which another court will pass upon, the one court losing its review of the issue on the question of the reasonableness of the rule, while the other court refuses its consideration of the rule on the basis that the question is whether the rule is wise or unwise.

Reasonableness is an elusive and changing concept. What was considered reasonable some fifty years ago may be considered unreasonable today; an act considered reasonable in one section of the country may be considered unreasonable in another; that which is reasonable in a cold climate may be unreasonable in a warm climate. It becomes necessary to analyze recent cases and decisions in an attempt to have a clearer understanding of the current thinking of the courts.

Court decisions serve as precedents for consideration of subsequent cases. These judicial precedents constitute legal principles which can become an invaluable aid to the school administrator and teacher in dealing with problems of pupil control. In this regard, Wallace Good[9] recently stated:

> Those problems that are faced almost daily by men and women charged with the administration of the public schools in America eventually become the subject matter of court

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[8] Madeline K. Remmlein, The Law of Local Public School Administration (New York, 1953) p. 191.

[9] Wallace E. Good, "Regulation of Student Conduct," The American School Board Journal, CLV (July, 1967) p. 23.

> decisions. In our legal system, while the major concern of the court is with the immediate case, the decision becomes the guideline for action or restraint in countless other situations. Discussions of recent appellate cases involving regulation of student conduct, then, should indicate the kinds of problems for which legal solutions are being sought, reveal trends concerning the authority of school personnel to regulate student conduct, and hint of changes in what our society expects of the school system.

Litigation in the area of pupil control appears to be increasing. This tends to indicate that there is much misunderstanding and many unresolved questions in this area. The only places to find these answers are in the laws and in the courts' interpretations of these laws.

Purpose of the Study

The purpose of the study is to ferret out, analyze and present a summary of the litigation by the courts in the area of pupil control that are the most pressing and controversial at this time. Implications of the courts' decisions for school personnel and trends in the current reasoning of the court will be discussed.

It is hoped that the information gathered with this study will serve as a useful guide for school administrators in making decisions relative to the problems of pupil control that they must face daily. Perhaps the study may help them avoid costly and embarrassing litigation.

Scope and Limitations of the Study

So numerous are the litigations related to the control of pupil personnel that one study cannot cover all the legal aspects pertaining

to this area. This study is limited to the litigious aspects of certain specified areas of pupil control that appear to be the most timely and significant in view of existing social conditions.

Statutory law will be referred to only in general terms with the major emphasis of the study being placed on case law. The study refers only to those cases brought before the higher courts and reported in the National Reporter System.

More specifically the study will be concerned with: (1) regulations concerning married pupils, (2) regulations concerning dress and personal appearance of pupils, (3) regulations concerning secret societies, and (4) the legality of methods used in enforcing pupil control; (a) corporal punishment (b) suspension and expulsion.

Because the laws under which public schools operate are periodically amended by judicial interpretation, the court decisions discussed will be of a recent date. The specific period under study will be the past twenty-five years (1942-1967). Older cases will be referred to only when they have important historical value or if they establish a principle which has not since been before the courts.

The intent will be to summarize the cases and to examine and analyze the general principles of law that can be gleaned from the judicial interpretations. An attempt will be made to identify the implications of these principles for those involved in public school administration.

Procedures of the Study

The procedure used is that part of the general method of historical research using the technique of legal research. In the

investigation of the court cases the American Digest System was used to locate the cases, the National Reporting System to read the cases, and Shephard's Citations to Cases was used to determine the current status of case material.

The following chapter contains the background information for the study. Chapters III, IV, V, and VI deal with the presentation of the data relative to the major areas of current concern, and the last chapter contains the conclusions and recommendations made as the result of the study.

CHAPTER II

BACKGROUND OF THE STUDY

> The law is not merely a composition of cold type; It is a living organism which molds itself to meet the needs of an ever changing civilization.[1]

The public school educational system of the United States, including the profession of teaching as well as school administration, has its basis in law. It rests upon ideas of the democratic state and relationships between the school and state.

Law literally means an edict or order, but it refers to much more than regulations and statutes which provide the framework. Gauerke[2] maintains that, "The real law, or justice, is made of a code and equity. Law is the rigid written framework which states what is legal. Equity, or fair play, sees that the law does not produce an unfair result."

Other than the great mass of law which has been written down in the form of constitutions, statues, and administrative enactments is the unwritten law or common law. Common law is that set of rules, or principles found in records of decisions of judges. It is the law made by judges rather than by legislative bodies.

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[1] Application of Fallon, 178 N.Y.A. (2d), (New York, 1958) p. 459.

[2] Warren E. Gauerke, School Law (New York, 1965) p. 1.

The concept of common law, along with most other aspects of the American legal system, is part of our heritage from England. Early in the history of England, judges had to decide the legal cases according to what they felt most persons would consider fair and equitable. The judges tended to follow the customs of the community and the common values of the people in making their decisions. These decisions became crystalized into principles which, in cases of controversy, were enunciated by the courts. This is the common law, sometimes referred to as unwritten law, and it is to be found in the reports of decided cases.

Common law, then, is "discovered" law in contrast to the enacted laws of statutes and constitutions. It is the law that emerges from case decisions—"case law". This case law, and the legal principles derived from it, has evolved through the years by the use of the doctrine of stare decises, "let the decision stand." Wormser[3] made the following statement concerning the development of common law:

> In a codified system of law, a judge may interpret the language of the written law as he wishes, regardless of the precedent. This is not true of the English system, which is governed by the rule of stare decises, or to stand by decided cases. Once a point of law has been decided by the highest court of appeal, it is fixed law and can be changed only by legislation. But the common law has been able to grow without constant interference by legislation because judges have been able in various ways, to circumvent disagreeable or obstructive precedent. The courts have been inclined to reasonable flexibility in determining what current policy may be.

In addition to the rule of stare decisis and the concept of common law, the English have influenced our legal system in many ways.

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[3]Rene A. Wormser, The Law (New York, 1949) p. 260.

Such concepts as the jury system, the writ of habeas corpus, freedom of speech, and due process are other examples of valuable legacies from the Anglo-Saxons.

One of the more valuable concepts, especially as it applies to the understanding of case law in the field of school administration, is that of "reasonableness". Gauerke[4] states that:

> An additional inheritance from Anglo-Saxon is the reasonable man idea, which appears throughout criminal and civil law. When a person does an act, the true test to determine legal responsibility continues to be: "What would a reasonably prudent man, in the circumstance, anticipate to be the consequences of his act?"

Seldom, if indeed ever, will a court decide a case involving school regulations without applying the test of reasonableness. In matters pertaining to pupil control, it is the major criteria used by the courts in determining the legality of actions of school officials.

Another important legal principle relative to regulation of student personnel that has also evolved from the common law is that of in loco parentis. The term means "in place of the parent." Sorenson[5] comments on the development of this principle in the following manner:

> Early American custom and law provided that parents assume responsibility for the education of their children.... Thus discipline and control of the child was in the hands of the parent. The Colonial family was ruled with complete authority.... As the task of education shifted from the home to the school, courts were called upon to define the relationship of the teacher now standing in the place of the parent in the instructional process. The legal term, in loco parentis came to have a fairly defined meaning in common law. In loco parentis as applied by the courts

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[4]Gauerke, p. 7.

[5]Helmer E. Sorenson, "Pupil Discipline and Control," The Oklahoma Teacher, XLIX (September, 1967) p. 23.

> provides that a teacher may exercise only those powers that are just, proper, necessary and reasonable for the welfare of the child under the circumstances which exist.

It becomes apparent that the law is not easily defined. There is no adequate basis for full understanding of such concepts as customs, laws, and reasonableness. Nobody can define precisely what such words mean. As one author states, "The phrase 'the law' is a paradox. It is mountain-like in concept, but the smallest detail is highly relevant in specific instances. One should know the law as it affects him; yet, he can know so little."[6]

Legal Sources of Public School Education

The public school system of the United States is an instrument of government created for a specific function which society has decreed to be a desirable one---the education of all the children of all the people. Any discussion of the law as it relates to education should be prefaced with the understanding that although there are many laws relating specifically to education, there are many more relating to the operation of government generally and only affect the public schools because education happens to be a part of government. It is important for school administrators to understand the sources and types of law under which the public school system operates.

The Federal Government and the Schools

The Constitution of the United States is the basic law of the land. All laws which are passed by Congress, state legislatures, or

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[6]Gauerke, p. 11.

any branch of national, state, or local government are subject to the limitations and provisions of this Constitution. Nowhere in the Constitution is there any mention of education. However, it should not be concluded from this fact that the Federal Constitution in no way relates to or affects education.

The positive powers of the national government with respect to education are found in the interpretation that has been given to the general welfare clause of the Constitution. This clause, which is located in Article 1, Section VIII, states that Congress shall have power, "To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the general welfare of the United States; ..."

Most authorities have agreed that the Federal Government, under this clause, has the implied authority to levy and collect taxes for the support of public school education. Edwards[7] says, "There can be no doubt that Congress under the general welfare clause would be accorded authority to make any reasonable appropriation for the support of education."

On the other hand it is well established that educational policy may be profoundly affected by certain limitations on the powers of the states contained in the federal Constitution. These limitations are to be found in Article 1, Section X, which prohibits the states from passing any laws impairing the obligation of contracts; the First

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[7]Newton Edwards, The Courts and the Public Schools (Chicago, 1955) p. 4.

Amendment which guarantees freedom of religion, speech, and peaceable assembly; and the Fourteenth Amendment which guarantees due process of the law and equal protection of the law.

The Federal Constitution reserves for the states the authority for maintaining the educational system. This authority is found in the Tenth Amendment which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the state respectively, or to the people." Education, then, is a function of the state.

The State and the Schools

It is well established that education is a function of state government. In spite of this fact, it is commonly believed by many people that education is a local function. This false assumption is probably reached because of the broad discretionary powers bestowed upon local officials in matters dealing with school operation. Edwards[8] points out that:

> Whatever vagaries may have been entertained by educational reformers or others, the courts have been forced by necessity to formulate a theory of education based upon what they deem to be fundamental principles of public policy. In legal theory the public school is a state institution.

The Supreme Court of Minnesota stated this principle in the following manner: "This court so frequently has affirmed the doctrine that the maintenance of the public school is a matter of state and not

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[8] Ibid., p. 23.

local concern that it is not necessary to further review the authorities at this date."[9]

Another commonly held misconception about public education is the belief that schools are established and maintained primarily for the benefit of the individual student. Although it is obvious that the individual does, in fact, derive much benefit from our system of public education, in legal theory this is not the primary purpose for which public schools are created.

The relation of school to the individual, on the one hand, and to organized society, on the other, has been established by the courts on many occasions. As an example, the position was clearly stated by the Supreme Court of New Hampshire in the following language:

> The primary purpose of the maintenance of the common school system is the promotion of the general intelligence of the people constituting the body politic and to thereby increase the usefulness and efficiency of the citizens, upon which the government of society depends. Free schooling furnished by the state is not so much a right granted to pupils as a duty imposed upon them for the public good. If they do not voluntarily attend the schools provided for them they may be compelled to do so. While most people regard the public schools as the means of great personal advantage to the pupils, the fact is too often overlooked that they are governmental means of protecting the state from the consequences of an ignorant and incompetent citizenship.[10]

State policy for school law finds expression through the medium of constitutional provisions and statutory enactments. The state

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[9] State v. Erickson, 251 N. W. 519 (Minnesota, 1933).

[10] Fogg v. Board of Education, 82 Atl. 173 (New Hampshire, 1912).

constitution enjoys the same relationship to state government as the Federal Constitution does to Federal Government. Subject to the limitations placed on it by the Federal Constitution it is the basic source for the law of the state.

Without exception state constitutions provide the necessary authority to enable state legislatures to provide for the establishment and maintenance of efficient systems of public schools. The principle is well established that the state legislature, subject to constitutional limitations, has plenary power with respect to matters of educational policy. Edwards,[11] commenting on legislative authority relative to school control, states:

> In the absence of constitutional prohibitions, the ends to be attained and the means to be employed are wholly subject to legislative determination. The legislature may determine the types of schools to be established throughout the state, the means of their support, the organs of their administration, the content of their curricula, and the qualifications of their teachers. Moreover, all these matters may be determined without regard to the wishes of the localities, for in education the state is the unit and there are no local rights except such as are safeguarded by the constitution.

Because no set of rules or laws can be so finely construed as to anticipate every conceivable situation, state legislatures, in actual practice, delegate general authority to other state and local agencies. In the area of education examples of these types of agencies are state departments of education, tax commissions, tenure commissions, county governments and local boards of education.

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[11] Edwards, p. 5.

Although the legislature does delegate authority to other agencies, the delegated authority must be administrative in nature and cannot be legislative. The rule is clear, but its application in specific instances may not be easy because of the difficulty in distinguishing one power from the other.

The only power that local school authorities have is that which is granted to them by the legislature. Local school districts are strictly creatures of the state created to serve a specific function of state government. The powers that are bestowed upon their officers tend to be general in nature. This has the effect of cloaking the local school officials with broad discretionary powers in matters pertaining to the efficient operation of the school.

The Courts and the Schools

It is inevitable that, in the performance of their administrative duties, the actions of the officials of the various education agencies will create conflict and differences of opinion. Unforeseen circumstances are certain to arise. Under these conditions it is obvious that there must be agencies to resolve the controversies which arise if the school system is to operate with any degree of efficiency. Under our form of government these agencies are the courts.

Courts are not allowed to act of their own volition. They can assume jurisdiction of only those controversies and legal matters that are initiated by individuals or agencies and referred to them for decision. Hamilton and Mort[12] define the role of the courts in the

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[12]Robert R. Hamilton and Paul R. Mort, The Law and Public Education (Brooklyn, 1959) p. 11.

following manner:

> The technical responsibility of the various courts is to interpret the law within the scope of their respective jurisdictions. It is humanly impossible for any legislature or constitutional convention for that matter, to foresee all of the controversies which may arise under any constitutional provision or statutory enactment. It then becomes the task of the court to determine, as far as possible, what it deems was the intention of the legislature when it enacted the law in question.

The same authors pointed out another function the courts may perform that affects the administration of the school by stating:

> Traditionally, legislative enactments lag behind developments in education. Since the courts are readily at hand, and can, by "liberal" construction of statutes, from real or imagined legislative restrictions, it would appear that the courts in a very real sense, are an adopting agency between the legislature and educational administration. If this be true, it is obvious that educational progress in any state, to a very real degree will depend upon the extent to which the courts understand and are sympathetic with the aims and purposes of education.[13]

Is it, perhaps, important to note that sometimes practices of school administration, especially in the areas of discipline and control, might lag behind current social values and mores? In this instance a liberal interpretation, by the courts, of individual rights of the students could result in embarrassing situations for school authorities in their attempts to regulate various aspects of student behavior and appearance.

This brief glimpse at the origin and sources of school law points out the difficulty of precisely defining its content. Gauerke[14] makes

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[13] Ibid.

[14] Gauerke, p. 11.

the following comments regarding the meaning of school law:

> School law means that body of legal precedent affecting education which comes from all sources. It includes more than state statutes which appear in the school code. If one were to stop here, he would overlook the relevant provisions of state and federal constitutions. He would not take cognizance of rules and regulations touching education authorized by administrative agencies. He would have omitted the thousands of policies adopted by local school boards which, when valid, amplify state and federal law.

In summary, it is apparent that there are various types of regulations combined into the vast body of law that pertains to public school education. These laws, regulations, and legal principles appear to fall into the following four groups:

1. Federal and state constitutional provisions
2. Statutory law
3. Administrative rules and regulations
4. Judge-made law or case law

Those who are charged with the responsibility of pupil discipline and control would do well to familiarize themselves with the legal aspects concerning their positions. The following chapter deals with the litigious aspects of rules and regulations relative to the dress and personal appearance of students in the public schools. Subsequent chapters deal with other specific problems in the area of public control.

CHAPTER III

RULES AND REGULATIONS REGARDING DRESS AND PERSONAL APPEARANCE

> It goes without saying that matters of dress as well as behavior are subject to control by school authorities. Caution should be exercised, however, since dress fads and fashions including hair styles or use of cosmetics once considered in bad taste and detrimental to the best interests of the school may with the passage of time become acceptable.[1]

There can be little doubt that problems involving control of dress and personal appearance are a source of interest and concern to those involved in public education. Flowers and Bolmeier[2] point out that perusal of newspapers, magazines, and periodicals for a short period of time will furnish one ample evidence to "conclude that school men are concerned with, and, in many instances, attempting to do something about the dress and personal appearnace of the pupils in their charge."

Somewhat typical of the "news" type coverage is the following quote taken from Newsweek magazine.

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[1] Helmer E. Sorenson, "Pupil Discipline and Control," The Oklahoma Teacher, XLIX (September, 1967) p. 23.

[2] Anne Flowers and Edward C. Bolmeier, Law and Pupil Control (Cincinnati, 1964) p. 85.

> The lines were drawn at U. S. High Schools last week—hemlines and hairlines. In Fremont, California two members of a rock and roll group called Peter Wheat and the Breadmen boycotted class and threatened to sue when the school's principal demanded that they shear their sheaves. Everywhere, the seasonal issue and locks and frocks—not to mention pierced ears, bell bottoms, Levi's, boots and sandals—set off a number of faculty-student squabbles.[3]

Another issue of Newsweek shows the seriousness of the problem and points out that it can become one of major proportions adversely affecting a significant number of students in a given school by reporting that:

> Perhaps the highest casualty rate for long-haired boys was reported at Tremper High School in Kenosha, Wisconsin, where principal Harold Brushton ordered 150 mopheads out of school until they saw the barber.[4]

The article also gives an indication of the extent to which some school officials go in prescribing certain standards of dress and appearance:

> San Francisco's public schools, for example, post a foot-long "Code of Dress" that outlaws pants that are form fitting or low slung, thong shoes, metal cheats and motorcycle or other heavy boots on boys. Girls are prohibited from wearing scarves, roller, curlers, clips, skirts above the knees, high slashed skirts or shifts. In some schools skirt lengths are tested by asking the girls to kneel: the hem must touch the floor.

For the past few years most of the controversy in the area of control of pupil appearance that has received a major portion of

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[3]"Hair-dos and Don'ts," Newsweek, LVIII (October 3, 1966) p. 4.

[4]"Long and Short of It," Newsweek, LVI (September 27, 1965) p. 64.

publicity has centered around the length and style of the male student's hair. Mary Anne Raywid,[5] in an article for the Phi Delta Kappan describes the situation in the following manner:

> Changing teen-age hair styles apparently caused more than the usual quota of teapot tempests this fall. ...Most often it is the girls who parade the reigning adornment; and perhaps it is the switch, with the male barbershop boycott, that has thrown us into "The Great Haircut Crisis." Whatever the reasons, "Crisis" it clearly is, and we must deal seriously with action taken and contemplated in the face of this menace.

She also pointed out that, in at least one school district, the problem has caused a rift between the principals' organization and the superintendent:

> Even the nation's largest school system had its cause celebre. When Principal Paul Balser suspended two Forest Hills High School seniors who defied his haircut demand, New York City Superintendent Bernard Donovon ordered the boys reinstated. The New York City Principals' Association got into the act to find out where the authority lay, and Donovon told them.

In the February, 1965 issue of the Phi Delta Kappan an editorial was written concerning the suspension from school of a young student because of his extreme haircut.[6] The editors commented on the situation and asked interested readers to respond. Their responses were tabulated and reported in the April, 1965 issue. A summary of the responses revealed:

> Of the over 100 responses received by March 1, from thirty-five states, half clearly supported the position taken by

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[5]Mary Anne Raywid, "The Great Haircut Crises of Our Time," Phi Delta Kappan, XLVIII (December, 1966) p. 150.

[6]"An Invitation to Kappan Readers," Phi Delta Kappan, XLVI (February, 1965) Inside back cover.

> Kores [the student] and his father, a fourth commended the school administration, and the remaining fourth assumed a variety of more or less noncommittal stances.[7]

A look at excerpts from the responses reveals the reasoning generally voiced to support one position or the other. The following statement, although quite lengthy, is repeated in its entirety because it appears to reflect most of the major views of those supporting the action of the school officials.

> You may consider the principal's action to be an invasion of the rights of the pupil. It was. So is the requirement that he take English in school, or that he be there at a certain time, or that he write his themes in ink. All rules are an invasion of a person's rights. If the rules are designated to obtain a result considered desirable by the school, if they are supported by the community, and if compliance results in no appreciable hardship, there can be little question as to the right of the authorities to make and enforce them. More was involved in this incident than the hairdo itself. Obviously, the hairdo was adopted to attract attention to the wearer. That attention, in the classroom, could only come from taking other students' attention away from the teacher to the detriment of her efforts to teach. Suppression of this sort of thing is a legitimate function of the principal. If one bizarre haircut went unchallenged, he might reasonably expect competing and more bizarre haircuts, or other adornment of an attention-getting nature. While much might be said in favor of half-shaven heads, scraggly beards, skirts slit up the side to expose the buttocks of the wearer, and dresses cut so low as barely to cover the nipples, it can hardly be said that they would enhance or contribute to the efforts of the school in educating the child, whole or in part, or in inculcating a sense of priority or good taste.[8]

The other side of the coin is reflected by the following statement:

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[7] "Readers Comment on 'The Great Hairdo Crisis'," Phi Delta Kappan, XLVI (April, 1965) p. 421.

[8] Ibid., p. 422.

> As a superintendent I should be more concerned with curriculum development, school finance, in-service growth of teachers. I should remember that fads pass along in time. And lastly, I should remember not to choke on gnats.[9]

Another reader felt that:

> School administrators and teachers find themselves in the position of talking out of both sides of their mouths: They urge the student to be self-reliant, to decide issues for himself, to be critical, to think for himself; on the other hand, if the result of such individual freedom is nonconformity, the student is immediately ostracised.[10]

If the comments found in most current magazines, periodicals, and professional journals are in any way a reflection of the opinion of the public, then it becomes readily apparent that more and more people are questioning the validity, necessity, and legality of school regulations designed to control the personal appearance of students. Richard Saxe,[11] Associate Professor, Illinois Teachers College, maintains that:

> Schools have become involved, needlessly involved, in harmful conflicts. The obvious error on the part of the school people was in seeking to coerce pupils and parents into accepting certain standards of dress and grooming by refusing to permit pupils to attend school until the pupils and parents capitulated and complied with the standards. ... Parents have full responsibility to see to the clothing and appearance of their children. ...When it becomes a matter of excluding pupils for matters of good taste we must remember that taste is not an absolute quality limited to educators and middle class clientele.

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[9] Ibid., p. 423.

[10] Ibid., p. 434.

[11] Richard Saxe, "Teacher, Coiffeur, or Couturier," Minnesota Journal of Education, XLVI (November, 1965) p. 25.

Another author supports this same position by stating:

> Every parent delegates a reasonable authority to the schools and is reasonably liable for its enforcement. How the young act in school is properly school business. But how they look when they leave for school [also within reasonable limits] - that, I shall insist, is family business and any family may reasonably demand the right to arrange it to its own taste.[12]

Paul Woodring[13] attacks the argument that clothing fads and appearance have a disruptive influence on the learning process in the following way:

> In defending their right to control fashions, the principals have maintained that the new fads interfere with the learning process and are disruptive of classroom morale. Some courts have held that a school is justified in prohibiting distracting influences in school. No doubt it is, but we doubt such principles can be applied consistently and equitably. The mere presence of a pretty girl in the classroom is distracting to adolescent boys, but we cannot deny girls the right to be beautiful on that account. It is doubtful any style of dress is, in itself, seriously distracting once the novelty wears off. It would be hard to prove that long hair on boys really interferes with the learning process.

School administrators are facing a new challenge in this area. More and more parents are beginning to support the position of their children. The regulations are being attacked as a denial of constitutional rights, and civil rights groups, such as the American Civil Liberties Union, have begun to intervene on behalf of the students.

An Education Age Report states:

> ...The New York and Kentucky chapters of the American Civil Liberties Union (ACLU) already have intervened on behalf of

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[12]John Ciardi, "Hair Styles and Harebrains," Saturday Review, XLVIII (May 1, 1965) p. 18.

[13]Paul Woodring, "Long Hair and Mini-skirts," Saturday Review, L (January 21, 1967) p. 56.

> students in three haircut cases. Other chapters may, and the national ACLU is considering a policy statement on freedom of expression in the secondary schools that, in draft form, says in part that faculty members "should not insist that their judgments of good taste are necessarily, and in all details, superior to that of the students...."[14]

Raywid[15] notes the entrance of the ACLU by stating, "Clearly, we are in trouble. Parents are concerned; school officials are worried; and the American Civil Liberties Union is, quite properly, taking steps." Woodring[16] also recognizes the significance of the entrance of the ACLU. He notes that, "In at least three states the American Civil Liberties Union has intervened on behalf of the students, with the result that some cases are being carried to higher courts....Now that civil rights groups are intervening against them, the school men are in for a bad time."

It is apparent that the question under consideration is one of current interest and concern to those interested in the educational process. A review of court cases and legal aspect textbooks will reveal the legal principles that have been established and indicate the current attitude of the court regarding the legal questions involved.

Garber and Edwards[17] state the general principle that has been accepted governing the authority of school officials in this regard:

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[14] An Education Age Report, "Haircuts, The Schools and the Law," Education Age, III (September-October, 1966) p. 32.

[15] Raywid, p. 150.

[16] Woodring, p. 55.

[17] Lee O. Garber and Newton Edwards, The Law Governing Pupils (Dannville, 1962) p. 7.

> It is well established by many court decisions that school boards have the authority to make and enforce any reasonable rules of governing the conduct of pupils. The reasonableness of a board rule will be determined by the facts in each particular case. In determining the reasonableness of a rule, a court will not substitute its own discretion for that of the board; the enforcement of the rule will not be enjoined unless the rule is clearly unreasonable. A board may not, however, enforce a rule with respect to a matter outside its jurisdiction.

They further point out that, "Rules regulating the dress of pupils have been held to be reasonable."

Drury and Ray[18] point out, however, that the courts will interfere if a board, "...acts arbitrarily, violates the law, alienates the pupil from proper parental control, or acts in a manner completely unrelated to the proper efficiency or conduct of the school system."

The United States Constitution largely leaves public education to the states. The states, in turn leave student control to local school boards. The local boards, in most instances, delegate a good deal of their authority to individual superintendents, principals, and teachers. When serious disciplinary sanctions such as suspension or expulsion are invoked, the constitutional right to due process comes into play. In such cases students and their parents or legal guardians are entitled to notice and, if they request it, a hearing before the board of education. Any action taken by the local board of education is subject to judicial review.

The cases brought before the courts may be divided into two broad areas: attempts to regulate dress and attempts to regulate the length and style of haircuts.

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[18] Robert L. Drury and Kenneth C. Ray, Principles of School Law (New York, 1965) p. 47.

Attempts to Regulate Dress

In spite of the divergent opinions of the public and the controversial nature of rules regarding control of dress, there have been few cases that have reached the courts on this subject. Edwards[19] acknowledges that, "Relatively few cases have come into the courts testing the authority of school boards to regulate the dress and personal appearance of pupils."

Flowers and Bolmeier[20] discovered that, "All litigation concerning the dress of pupils has been confined to the twentieth century." The writer found eleven cases involving control of dress, the first was reported in 1906 and the latest in September of 1966. Five of these cases have been reported since 1947 and three of them were heard in 1966. Although there has been a paucity of cases in the area, it appears that the matter is timely and the three very recent cases indicate current concern with the problem.

The earlier cases dealing with the problem were involved with the question of the validity of rules and regulations prescribing a certain form dress. In 1906 the Supreme Court of Georgia was asked to rule on the legality of a regulation which required that all male pupils "over four feet six inches" tall between certain ages to wear a prescribed uniform in order to attend a public school.[21] A father sought to

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[19] Newton Edwards, The Courts and the Public Schools (Chicago, 1955) p. 568.

[20] Flowers and Bolmeier, p. 86.

[21] McCaskill v. Bower, 54 S. E. 942 (Georgia, 1906).

restrain the superintendent from enforcing the rule. The court dismissed the case because the father sought relief before the fact and hence had chosen improper legal remedy. There had been no allegation that the rule had been enforced. The court in discussing the lack of allegation concerning enforcement said, "No principle is more clearly recognized than that equity will not attempt to do a thing which is vain; and it would be useless indeed to grant relief before injury is even threatened."

Perhaps a more widely known case concerning the prescription of uniforms by school authorities is Jones v. Day.[22] The board of trustees had adopted a resolution requiring all high school boys to wear khaki uniforms and ordered the principal to enforce the regulation on all pupils "...in public places within five miles of the school, every day including Saturday and Sunday."

The Supreme Court of Mississippi ruled that since certain pupils were boarding pupils they were under the care and custody of school authorities during the entire school term; and the rule, therefore, was applicable to them--"until they cease to be under the care and control of the school management"--; but the court added that the rule, when applied to day students, could be in effect only when the pupils were under the care and control of the school and not in parental charge.

The actions of a board of education, in refusing to grant a high school girl her diploma because she refused to wear a cap and gown,

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[22] Jones v. Day, 89 So. 906 (Mississippi, 1921).

was found to be unreasonable and arbitrary by the Supreme Court of Iowa.[23] The court stated:

> The wearing of a cap and gown on commencement night has no relation to educational values, the discipline of the school, scholastic grades, or intellectual advancement. ...from a legal standpoint the board might as well attempt to direct the wearing of overalls by the boys and calico dresses by the girls.

Probably the case most cited by authors is one that came before the Supreme Court of Arkansas.[24] A board of education had adopted a rule which stated, "The wearing of transparent hosiery, low-necked dresses or any style of clothing tending toward immodesty in dress, or the use of face paint or cosmetics, is prohibited." A girl had been asked to remove her make-up and to refrain from wearing it to school again. She returned to school with talcum on her face and was denied admission for failure to obey the rule. The girl then requested the court to issue a writ of mandamus requiring local school officials to reinstate her.

The court indicated that unless it could be shown that there was a clear abuse of discretion by the school board in adopting such a rule and that the rule was unreasonable, the court must uphold the rule regardless of whether the action of the board was considered wise by the court. Justice Smith wrote the majority opinion for the court, part of which is quoted below:

> Courts have other and more important functions to perform than that of hearing the complaints of disaffected pupils

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[23] Valentine v. Independent School District of Casey, 184 N. W. 434 (Iowa, 1921).

[24] Pugsley v. Sellmeyer, 250 S. W. 538 (Arkansas, 1923).

> of the public schools against rules and regulations promulgated by the school boards for the government of the schools. The courts have the right of review, for the reasonableness of such a rule is a judicial question, and the courts will not refuse to perform their functions in determining the reasonableness of such rules, when the question is presented. But, in so doing, it will be kept in mind that the directors are elected by the patrons of the schools over which they preside, and the election occurs annually. The directors are in close and intimate touch with the affairs of their respective districts, and know the conditions with which they have to deal. It will be remembered also that respect for constituted authority and obedience thereto is an essential lesson to qualify one for the duties of citizenship, and that the schoolroom is an appropriate place to teach that lesson; so that the courts hesitate to substitute their will and judgment for that of the school boards which are delegated by law as the agencies to prescribe rules for the government of the public schools of the state.

The court further pointed out that since local conditions might exist which would justify the adoption of a rule of this nature to aid in the discipline of the school and since it was unnecessary to seek a reason for the adoption of such a rule in order to uphold it, the court would not annul it.

The decision of the court, however, was not unanimous. One of the judges writing a dissenting opinion stated: "I think that a rule forbidding a girl of her age (eighteen) from putting talcum powder on her face is so far unreasonable and beyond the exercise of discretion that the court should say that the board of directors acted without authority in making and enforcing it."

This case is significant because it indicates dramatically how a court's thinking may tend to change or modify with the passage of time. It would severely stretch the imagination of the most conservative people to think that in view of today's values and mores a rule such as this one would continue to be held as "reasonable".

A few years later the Supreme Court of North Dakota ruled that school officials could forbid pupils to wear metal heel plates when they caused more than normal damage to the floors and when noise and confusion was such as to affect the conduct and discipline of the school.[25] The parents of one boy insisted that it was their prerogative to decide what apparel their child would wear to school and that the school was being arbitrary and unreasonable.

The court explained that this was one of those instances in which the paramount right of the parent must give way to the interests of the public generally and that "...there was no hardship or indignity imposed upon the plaintiff or his son by it." The court further stated that although the boy was an excellent student of good conduct, that fact could not alter their decision. They stated:

> Whatever he did was done without malice or willful disregard of rules and only because of parental command. It seems to us that even so his conduct amounted to insubordination. Any other construction put upon the term as used in the statute might result in an intolerable situation. No rule or regulation could be enforced, provided the parent directed the pupil not to observe it.

A prohibitory rule which included the statement that "wearing of jerseys, sweaters, caps and other conspicuous evidence of membership in an unapproved secret organization is hereby forbidden on the school premises," was upheld by the Supreme Court of Massachusetts.[26] The court dismissed the petition saying that the expulsion of students

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[25] Stromberg v. French, 236 N. W. 477 (North Dakota, 1931).

[26] Antell v. Stokes, 191 N. E. 407 (Massachusetts, 1934).

violating the rule did not exceed the power conferred upon the committee by the legislature.

The next case challenging the authority of school officials in the area of dress appeared before the Supreme Court of Georgia.[27] The principal of a high school refused to permit a female pupil to continue her classes while wearing slacks. The father petitioned the courts for a writ of mandamus directed at the principal. He maintained that the principal's act interfered with his rights guaranteed under certain provisions of the constitutions of the United States and Georgia.

The court denied the writ on the technical grounds that the petition did not show the principal to be a public officer or the school to be a part of the school system. Whether his unsuccessful attempts to gain a writ were a source of discouragement, whether the question became moot, or whether the plaintiff was able to resolve his grievance without further court action is not known; but no report is found to indicate that Matheson pursued the subject any further.

It was fifteen years later before the court had occasion to rule on another case involving wearing apparel. The case, decided by the Supreme Court of Alabama, involved a petition for mandamus requiring the county board of school commissioners and others to readmit the child of the petitioner to school.[28] The child, a female student, had refused to wear the prescribed uniform in a required physical

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[27] Matheson v. Brady, 43 S. E. (2d) 703 (Georgia, 1947).

[28] Mitchell v. McCall, 143 So. (2d) 629 (Alabama, 1962).

education class because it was against her religious belief. The school had conceded that they would not require her to wear the uniform but she must attend the class and take those exercises and participate in those activities that modesty and her religious belief would so allow. The father continued to object and complained that unless the school offered a separate class composed of those who shared his daughter's belief that she would be made to appear a "speckled bird" and would be subjected to ridicule by her classmates.

The court held that the student, on the basis of religious principles, was not required to participate in exercises which would be immodest in ordinary apparel, nor was she required to wear a prescribed outfit. However, she was obligated to attend the course in physical education and that such course did not violate her constitutional rights. In regard to the allegation that the daughter would be made to appear different the court replied:

> All citizens, in so far as they hold views different from the majority of their fellows, are subject to such inconveniences and this is especially true of those who hold religious or moral beliefs which are looked upon with disdain by the majority. It is precisely every citizen's right to be a "speckled bird" that our constitutions, state and federal, seek to insure. And solace for the embarrassment that is attendant upon holding such beliefs must be found by the individual citizen in his own moral courage and strength of conviction, and not in a court of law.

The reasoning used in this opinion may prove to be particularly significant if applied to the haircut cases discussed later in this chapter. If, in fact, it is every citizen's right to be a "speckled bird", what implications does this hold for future courts when they are considering the authority of school officials who attempt to regulate extremes in dress and appearance? And, if state and federal

constitutions seek to insure this right, does this imply that school officials are in for legal headaches if they attempt to control dress and appearance that is different from the accepted standard?

Two recent cases were decided on the same day by the same court with similar but distinguishable characteristics. These cases offer an excellent example to support the principle that each case must be decided on its own merits and that local circumstances will be taken into consideration by the courts in determining the reasonableness of regulations or actions of school officials. The court, in one case, upheld a rule by school authorities prohibiting the wearing of freedom buttons, and in the other case the rule was declared an unreasonable infringement on the students' rights.

In the Burnside[29] case a number of high school students persisted in wearing buttons that had "one man, one vote", around the perimeter and the initials SNCC in the center. The students and their parents were duly informed that they were not to wear the buttons in school and were ultimately suspended when they didn't comply.

The opinion of the court is partially given below:

> The regulation which is before us now prohibits the wearing of "freedom buttons" on school property. The record indicates only a mild showing of curiosity on the part of the other school children over the presence of some thirty or forty children wearing such insignia. Even the principal testifies that the children were expelled not for causing a commotion or for disrupting classes, but for violating the school regulation. Thus it appears that the wearing of "freedom buttons" did not hamper the school in carrying on its regular schedule of activities; nor would it seem likely that the simple wearing of buttons unaccompanied by improper

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[29] Burnside v. Byars, 363 F. (2d) 744 (Mississippi, 1966).

> conduct would ever do so. ...If the decorum had been disturbed by the presence of the "freedom buttons", the principal would have been acting within his authority and the regulation forbidding the presence of buttons on school grounds would have been reasonable. But the affidavits and testimony before the District Court reveal no interference with educational activity and do not support a conclusion that there was a commotion or that the buttons tended to distract the minds of the students and teachers. Nor do we think that the mere presence of "freedom buttons" is calculated to cause a disturbance sufficient enough to warrant their exclusion from school premises unless there is some student misconduct involved. Therefore, we conclude that the regulation forbidding the wearing of "freedom buttons" on school grounds is arbitrary and unreasonable and an unnecessary infringement on the students' protected right of free expression.

The court further points out that:

> We wish to make it quite clear that we do not applaud any attempt to undermine the authority of the school. We support all reasonable regulations for the conduct of their students and enforcement of the punishment incurred when such regulations are violated. Obedience to duly constituted authority is a valuable tool and respect for those in authority must be instilled in our young people. But, with all this in mind, we must also emphasize that school officials cannot ignore expressions of feeling with which they do not wish to content. They cannot infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and in the school rooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.

The other case decided on the same day by the same court also dealt with the same type freedom buttons.[30] In this case students marched into classrooms, threw buttons into windows, attempted to force buttons on people who did not want to take them, and, in general,

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[30] Blackwell v. Issaquena County Board of Education, 363 F. (2d) 749 (Mississippi, 1966).

created a disturbance. The court, in this case upholding the actions of the school officials, pointed out that:

> Despite the factual differences in the two cases [i.e. Burnside] the question we must decide remains the same. Is the regulation forbidding the wearing of "freedom buttons" by school children reasonable? A reasonable regulation is one which is essential in maintaining order and discipline on school property and which measurably contributes to the maintenance of order and decorum within the educational system. ...It is always within the province of school authorities to provide by regulation the prohibition and punishment of acts to undermine the school routine. This is not only proper in our opinion, but it is necessary.

The court continued by stating:

> Cases of this nature, which involve regulations limiting freedom of expression and the communication of an idea which are protected by the First Amendment, present serious constitutional questions. A valuable constitutional right is involved and decisions must be made on a case by case basis, keeping in mind always the fundamental constitutional rights of those being affected. Courts are required to weigh the circumstances and appraise the substantiality of the reasons advanced which are asserted to have given rise to the regulations in the first instance. The constitutional guarantee of freedom of speech does not confer an absolute right to speak and the law recognizes there can be an abuse of such freedom.

The court concluded their opinion by pointing out:

> In the instant case, as distinguished from the facts in Burnside, there was more than a mild curiosity on the part of those who were wearing, distributing, discussing and promoting the wearing of buttons. There was an unusual degree of commotion, boisterous conduct, a collision with the rights of others, an undermining of authority, and a lack of order, discipline and decorum. The proper operation of the public school system is one of the highest and most fundamental responsibilities of the state. The school authorities in the instant case had a legitimate and substantial interest in the school's operation. In this case the reprehensible conduct was so inexorably tied to the wearing of the buttons that the two were not separable. In these circumstances we consider the rule of the school authorities reasonable.

The outcome of these two cases is almost certain to leave many unanswered questions in the minds of school authorities. It seems that the courts are saying, at least under these facts, that rules and regulations which may infringe upon constitutional rights may not be promulgated unless there is already evidence of the necessity to exercise stern disciplinary measures. These decisions have the effect of leaving the school administrator who anticipates difficulty and moves to head it off in a much more vulnerable position than the administrator who waits for commotion to develop.

The latest case of this sort, to come before the courts, is similar to the two discussed above.[31] It was decided September 1, 1966. This case involved an action against a school district, its board of directors, and certain administrative officials and teachers. The plaintiff wanted to recover nominal damages and to obtain an injunction against enforcement of a regulation promulgated by the school district which prohibited the wearing of black arm bands on school facilities.

The events giving rise to this controversy took place in December, 1965. When the school board in Des Moines found out that several students intended to wear black arm bands to express their objections to the Vietnam war, it enacted a regulation prohibiting the wearing of such bands on school property. Despite the regulation, five children, ranging in age from eight to fifteen years wore the bands. They testified that their purpose in wearing them was to mourn those who had died

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[31] Tinker v. Des Moines Independent Community School District, 258 F. Supp. 971 (Iowa, 1966).

in the Vietnam war and to support Senator Robert F. Kennedy's proposal that the truce proposed for Christmas day, 1965, be extended indefinitely. When the children arrived at their respective schools wearing the bands, school officials sent them home.

The question to be decided was whether or not the action of the school officials deprived the plaintiffs of constitutional rights guaranteed by the freedom of speech clause of the First Amendment. The court said that the wearing of an arm band, for the purpose of expressing certain views, is a symbolic act and falls within the protection of the free speech clause. The court indicated, however, that the protections of that clause are not absolute. The abridgement of speech by a state regulation must always be considered in terms of the actual abridgement of speech that occurs and the objective which the regulation seeks to accomplish.

The court notes that school officials are responsible for maintaining a scholarly, disciplined atmosphere in the classroom, and they have both the right and the obligation to prevent anything which might disrupt this atmosphere. Unless the actions of school officials in this connection are unreasonable, the courts should not interfere. The opinion pointed out that:

> A subject should never be excluded from the classroom merely because it is controversial. It is not unreasonable, however, to regulate the introduction and discussion of such subjects in the classroom. ...While the arm bands themselves may not be disruptive, the reactions and comments from other students as a result of the arm bands would be likely to disturb the disciplined atmosphere for any classroom. It was not unreasonable in this instance for school officials to anticipate that the wearing of black arm bands would create some type of classroom disturbance. ...On the other hand, the plaintiffs' freedom of speech is infringed upon only to a limited extent. ...It is vitally important that the interest of students such

> as the plaintiffs' in current affairs be encouraged whenever possible. In this instance, however, it is the disciplined atmosphere of the classroom, not the plaintiffs' right to wear arm bands on school premises, which is entitled to protection of the law.
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> The court concluded by stating:
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> After due consideration, it is the views of the court that action of school officials in this realm should not be limited to those instances where there is material or substantial interference with school discipline. School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably expected, actions which are reasonably calculated to prevent such a disruption must be upheld by the court. In the case now before the court, the regulation of the defendant school district was, under the circumstances, reasonable and did not deprive the plaintiffs of their constitutional right to freedom of speech.

This opinion differs from the Burnside and Blackwell cases in that it implies that regulations may be formulated if school officials can show that it is reasonable to anticipate disturbances. The other opinions require the actual manifestation of commotion and disruption before the regulation will be considered reasonable.

Attempts to Regulate Length and Style of Hair

Perhaps the most widely publicized problems relating to control of dress and appearance are those related to the attempts of school authorities to regulate the length and style of the haircuts of school-age boys. It is surprising to learn that the problem is, perhaps, not as new as we tend to believe it is. Education Age, an educational publication, reports that, "New York's state commissioner of education ruled in 1874, in a haircut case, that local school officials had no authority to establish regulations governing students' hair styles."[32]

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[32] An Education Age Report, p. 33.

However, it is only recently that the issue has become widespread and highly controversial. The first haircut case the writer was able to locate, to reach the appellate courts, was decided by the Supreme Court of Massachusetts in December of 1965.[33] The court record of this case reveals that George Leonard Jr., age seventeen, was a senior at Attleboro High School in September, 1964. A rock-and-roll performer since he was twelve, George had let his hair grow during the summer vacation. After attending school three days, he was suspended by the principal and told he could not return to school until he had his hair cut. A letter was written to George's parents advising them of the school's action and stating that school regulations did not allow extreme haircuts or any other items which were felt to be detrimental to classroom decorum.

The parents requested and were granted a hearing before the Attleboro School Committee. At the hearing, one committee member displayed a barber's clippers and another suggested that George have his hair cut and buy a wig for his professional performances. The committee, on a split vote, upheld the suspension. The parents brought suit in Superior Court to restrain the school authorities from enforcing the regulation. The Lower Court upheld the regulation and the parents appealed.

The Supreme Court, in its findings, criticized the member, displaying the clippers saying, "The display of the barber's clippers

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[33] Leonard v. School Committee of Attleboro, 212 N. E. (2d) 468 (Massachusetts, 1965).

reveals a regrettable lack of appreciation for the gravity of the hearing." The court also commented that, "...while the comment that the plaintiff purchase 'different colored wigs' contains the germ of a legitimate suggestion it was presented in an insinuating manner. Thus the decorum of the hearing is not to be commended."

The court also found that (a) George, while a student, was at all times conscientious, well-behaved and properly dressed, that (b) he had performed at the Newport Jazz Festival and the New York World's Fair, among other places, and customarily received "substantial sums" for his musical services, that (c) his father had spent a "considerable sum" on his musical training, that (d) George's image as a performer, which is in part based on his hair style, is an important factor in his professional success, and finally, that (e) "...the regulation of haircuts may affect the private and personal lives of students more substantially than do restrictions regarding dress." With all this said and done, the six justices of the court unanimously affirmed the decision of the Lower Court and upheld the suspension. They went on to say, in part, in their decision:

> The court's function in reviewing this type of ruling is limited in the light of the broad discretionary powers which the law confers upon a school committee.... We are of the opinion that the unusual hair style of the plaintiff could disrupt and impede the maintenance of a proper classroom atmosphere or decorum. This is an aspect of personal appearance and hence akin to matters of dress. Thus, as with any unusual, immodest or exaggerated mode of dress, conspicuous departures from accepted customs in the matter of haircuts could result in the distraction of other pupils.

The court continues by noting that:

> ...The plaintiff contends that the challenged ruling is an invasion of family privacy touching matters occurring while he is at home and within the exclusive control of his parents.

> So here, the domain of family privacy must give way in so far as a regulation reasonably calculated to maintain school discipline may affect it. The rights of other students, and the interests of teachers, administrators and the community at large in a well run and efficient school system are paramount.

The court further stated:

> We reject the plaintiff's contention that even if the regulation is valid its application to him is unreasonable. It may be conceded that the length and appearance of the plaintiff's hair are essential to his image as a performer, and hence to his ability to follow his chosen profession. But the discretionary powers of the committee are board and the courts will not reverse its decision unless it can be shown it acted arbitrarily or capriciously.

In another haircut case, believed to be the first of its kind to reach the federal courts, the United States District Court, Northern District of Texas, considered the constitutionality of a board regulation excluding pupils who wear "beatle" type haircuts from schools.[34]

The three boys involved in the case were of high school age. They were members of a musical group known as Sounds Unlimited. They were under contract with a Mr. Alexander to maintain their dress and personal appearance including the "beatle" type hair style. However, under Texas law, as under the law in general, such a contract is unenforceable with respect to minors.

According to the testimony, the boys, instead of reporting to their home rooms at the beginning of school, as was the usual procedure, went to the high school principal's office. Their booking agent and their parents accompanied them. The purpose of the visit was to confer

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[34] Ferrell v. Dallas Independent School District, 261 F. Supp. 545 (Texas, 1966).

with the principal, since they understood that the boys would be denied admission to the high school because of their hair styles. They were correct in their understanding. The principal advised the boys that they would not be admitted until they had their hair cut or trimmed. Parents then brought action, on behalf of the minor students, for an alleged violation of the constitutional rights of the students involved.

The school officials contended that (a) the federal court had no jurisdiction in the case at hand because the alleged federal questions involved were frivolous and unsubstantial, and that (b) the plaintiffs had failed to exhaust their administrative remedies before bringing suit in court.

The court in replying to the contention that the plaintiffs failed to exhaust administrative remedies stated that under Title 42, U.S.C.A., failure to exhaust administrative remedies will not defeat an applicant's claim for relief. The court also denied that the alleged federal questions were "frivolous and unsubstantial." They stated, "With this contention we do not agree, and are of the opinion that the matter is controlled by the now historic case of Brown v. Board of Education of Topeka."[35] In the Brown decision, the Supreme Court of the United States said that where a state has undertaken to provide an education, it is a right which must be made available to all on equal terms. This, apparently, could include boys who wear "beatle" haircuts.

In the Ferrell case the opinion, in part, continued by stating:

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[35]Brown v. Board of Education of Topeka, 347 U. S. 493 (Kansas, 1954).

Having determined now that the court has jurisdiction of this case, what are the questions the court must resolve? ...were the school authorities legally authorized to promulgate the regulation that students' hair shall not be of "beatle" length? ...The court could focus on the school administration and attempt to justify the regulation by emphasizing the educational need for an academic atmosphere and the resulting demand that disturbances be kept to a minimum. Or, it can focus more directly on the individual student and evaluate education in terms of the individual. The regulation must serve both purposes. We feel that where the effects of the regulation extend beyond the classroom, and bear directly on the student's person and his freedom of expression, the latter approach provides a more reasonable basis for school concern, and it is here that the court should look to justify the regulation.

The court further pointed out that:

Since confusion and anarchy have no place in the classroom, school authorities must control the behavior of their students. If the student's dress is lewd or his appearance a studied effort to draw attention to himself, his presence is disruptive. ...such behavior is no different than verbal rudeness. ...The court is concerned for the welfare of the individual plaintiffs in this case, but feels the rights of other students, and the interests of teachers, administrators and the community at large are paramount. It also appears that there is a fairly reasonable indication that this situation could have been deliberately planned by the previously mentioned "agent" for the boys. The phone call to the principal's home and the subsequent confrontation of the principal by the boys and their agent, followed immediately by a song and news interviews [previously arranged by the agent], give support to this supposition. Plaintiffs contend naturally that their primary interest is to get an education, but it appears that they want this education on their own terms. It is inconceivable that a school administrator could operate his schools successfully if required by the courts to follow the dictates of the students as to what their appearance shall be, what they shall wear, what hours they will attend....

The court concluded by saying:

...It does not appear from the facts of this particular case that there has been any abuse of discretion on the part of school authorities. On the contrary, it appears that they acted reasonably under the circumstances, taking into consideration these individual students and the need for an academic atmosphere. ...It is, therefore, the

> opinion of this court that there has been no violation of minor plaintiffs' rights; either state or federal, by the school authorities. ...Further, the terms upon which a public free education is granted in the high schools of Texas cannot be fixed or determined by the pupils themselves. Nor is a contract which is unenforceable against the minor plaintiffs in this state to be considered determinative of the right.

It is interesting to note that even though the court once again upheld the school regulation, much of the language of the opinion implies that if circumstances had been different, the court might have ruled otherwise. Of particular significance was the quote from the Harvard Legal Communications stating:[36]

> Where the students deviant appearance is not a manifestation of a negative antisocial personality, the problem becomes more difficult. It puts a strain on the wards to prohibit the wearing of clean, combed, long hair in the name of educational efficiency. And such reason can be circular since the schools effort to single out such behavior as disruptive often creates the disruption. This is especially true when the issue is long hair. The Beatle-cut is the current fad, and at summer's end, extra long bangs are not a novelty among teenagers. The educational system suffers many minor disruptions every day; the enterstudent feud that starts during school hours, and the classes that are cut to manufacture prom decorations. It should not be so finely tuned that it clogs on an extra two inches of hair.

The only other haircut case to appear before the courts was also decided at the federal level.[37] It was an action brought under the Civil Rights Act in which the court ruled that a high school student had no constitutional right to keep his hair long in direct disobedience to rules and regulations of a parish school board.

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[36] 3 Harv. Legal Comm., quoted in Ferrell v. Da' School District, p. 551.

[37] Davis v. Firment, 269 F. Supp. 524 (L

The court, reaching its decision, quoted at length the two haircut cases cited previously in this chapter. They said that the plaintiff's contention, that the regulation forcing him to cut his hair was an infringement upon his right of freedom of expression, is grounded upon the assertion that the choice of a particular style of hair grooming constitutes symbolic expression or speech. The court then quotes from a Supreme Court Opinion that stated, "...a symbol must symbolize a specific idea or viewpoint. A symbol is merely a vehicle by which a concept is transmitted from one person to another; unless it represents a particular idea, a symbol becomes meaningless."

The court then poses the question: "But just what does the wearing of long hair symbolize? What is the student Davis trying to express? Nothing really." They continue by contending that if the wearing of long hair is assumed to be a symbolic expression, it falls within that type of expression "...which is manifested through conduct and therefore subject to reasonable state regulation in the furtherance of a legitimate state interest."

All three of the haircut cases that have appeared before the courts have resulted in decisions upholding the authority of the school officials' rules and regulations. It is interesting to note, however, that in spite of this, the New Jersey State Board of Education has decided that public schools have no business attempting to regulate the hair style of male students.[38] The board decided unanimousl

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[38] Education U.S.A. (September 25, 1967) p. 20.

to order the New Milford High School to readmit a freshman expelled last November for refusing to cut his shoulder-length locks.

A Related Problem-Freedom of Expression

Closely related to the problem of regulation of dress and personal appearance is one that is much more basic; the right of an individual for freedom of expression. Four of the cases reviewed in this chapter had freedom of expression as the basic question to be resolved.[39]

The courts failed to uphold the authority of the local school officials in only one of these cases.[40] In this case the court reasoned that school officials had no authority to infringe on their students' rights to free expression as guaranteed by the First Amendment to the Constitution when the exercise of such right did not interfere with the requirements of appropriate discipline in the operation of the school.

In the other cases the courts reasoned that the protections afforded by the Constitution are not absolute and that the disciplined atmosphere of the classroom, not the individual's right to free expression, is entitled to protection of the law. They also pointed out school officials must be given wide discretion in determining what

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[39] Tinker v. Des Moines Independent School District, 258 F. Supp. 971 (Iowa, 1966), Burnside v. Byars, 363 F. (2d) 744 (Mississippi, 1966), Blackwell v. Issaquena County Board of Education, 363 F. (2d) 749 (Mississippi, 1966), Davis v. Firment, 269 F. Supp. 524 (Louisiana, 1967).

[40] Burnside v. Byars, 363, F. (2d) 744 (Mississippi, 1966).

might reasonably be expected to interfere with the disciplined atmosphere of the classroom.

Two other cases, although having nothing to do with dress and personal appearance, are concerned with the constitutional rights of students under the due process of law clause and deserve attention here. Both of these cases originated in New York and both dealt with the question of the right of a student to be represented by an attorney at a school board hearing or conference.

The first of these cases was decided by the Supreme Court of New York County.[41] It involved a proceeding to have the petitioner's attorney present at a hearing scheduled to discuss her son's temporary suspension from school because of misconduct. The court contended that under the prevailing law the board of education had the right to establish the procedure relating to pupil suspension. They indicated that the hearing was simply an interview or conference which included school officials and parents and that, "...they are purely administrative in nature, and are never punitive. The parents are fully apprised of all of the facts and are furnished with copies of all information in respondent's possession." The court concluded by stating:

> Respondent is not statutorily mandated to grant a hearing. Moreover, because the hearing or conference is administrative in nature, the petitioner is not entitled to be represented by counsel, who might turn the conference into a quasi-judicial hearing.
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> Respondent is vested with discretion in the performance of its duties, only a clear abuse of such discretion is reviewable by a court, and no such unauthorized action here appears.

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[41] Cosme v. Board of Education City of New York, 270 N.Y.S. (2d) 231 (New York, 1966).

> Accordingly, the petition is legally insufficient. Furthermore, any final determination—which has not here occurred—made in or a part of a suspension hearing is reviewable by the Supreme Commissioner of Education. Consequently, the application is premature since administrative remedies by way of review have not been exhausted. For the reasons stated, the motion is denied and the petition dismissed.

The outcome was quite different in a recent case decided by the United States District Court.[42] In New York City a guidance conference is a formal procedure for pupils suspended from school by their principals. The conference is held in the office of the responsible district superintendent. Present are the superintendent, principal, guidance coordinator, parents, and pupil. Often an interpreter is also present for non-English-speaking parents. The outcome of such a conference could be a transfer to another school or to a special school with rehabilitative facilities, home instruction, or assistance from psychological and guidance experts.

In the case at hand a fourteen-year-old junior high school student, suspended after striking a teacher, was denied the right to bring a lawyer to his guidance conference. Through his lawyer, the boy then brought suit.

In what is certain to become an historic opinion, Justice Constance Baker Motley wrote, "The due process clause of the fourteenth amendment is applicable to a district superintendent guidance conference. The 'no-attorney' provision deprives plaintiffs of their rights to a hearing in a state-initiated proceeding which puts in jeopardy the minor's liberty and right to attend public schools."

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[42] Madera v. Board of Education of the City of New York, 267 F. Supp. 356 (New York, 1967).

Educator's Dispatch, discussing the implications of the opinion states that protesting groups of school administrators are making this major point: "Suspension hearings aren't punitive actions; they're conferences for planning the child's educational program. The presence of a lawyer would radically alter their nature, casting an 'aura of the court room' over school administration."[43]

The Dispatch further points out that an appeal of the decision by the New York board is currently pending, but legal observes aren't at all certain of the outcome and that:

> The trend in court decisions in recent years has been in the direction of increasing individual civil liberties, and the recent ruling has support among civic organizations, such as the United Parents Association, which charges that New York school authorities provide insufficient help to youngsters suspended, but not given correctional educational services.

Summary

All litigation concerning the dress and personal appearance of school children has been confined to the twentieth century. There are few, if any, statutes either specific or implied dealing with the authority of school officials to regulate these factors. The power to take action under the general authority delegated to school officials by the legislature and the reasonableness of the action taken have been the foci for rendering decisions concerning the differences presented to the courts.

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[43] Educator's Dispatch, XXII (June 1, 1967).

There seems to be much controversy and interest in this area and the different regulations formulated to deal with unconventional attire and appearance has been limited only by the imagination of local school personnel. In the past, relatively few instances of court action have been reported when parents felt that the control exerted by the school was an invasion of parental rights. Perhaps the parents approved of the actions of school authorities, perhaps they felt that the control of dress was within the authority of the school officials, or they may have felt that it was simpler and cheaper to comply than to litigate. Whatever the reasons, there are indications that the situation may be changing.

There has recently been a flurry of activity in this area and six cases have appeared before the courts in the last two years. Three of these have evolved around attempts to control the hair style of male students. Civil rights groups such as the American Civil Liberties Union have entered into the controversy on behalf of students and more and more regulations are being attacked as depriving the students of their constitutional right to freedom of symbolic expression.

Much of the language used by the courts in their opinions tend to indicate a keen awareness of the rights of the individual as opposed to the right of school authorities to regulate dress and appearance. Theoretically, they seem to imply, in many instances, that such regulations are difficult to justify. But in practice, their ultimate decisions reveal that their views on reasonableness have largely mirrored those held by school boards, principals, and superintendents. In fact, the courts have seldom gone deeply into the merits or

demerits of specific rules and regulations, but consider instead only the reasonableness with which the rule has been administered.

School men will do well to recognize that times and customs change more rapidly today than years ago. Certainly, what was held to be reasonable by the Arkansas Supreme Court in 1923--the ban on transparent hosiery, face paint and cosmetics--would scarcely be held reasonable today. Styles in boys' haircuts can change, too. The pendulum may be swinging.

Chapter IV treats another aspect of pupil control that has received much attention since the turn of the century. It centers around the attempts of local school officials to cope with the problems relative to the attendance of married students in the public schools.

CHAPTER IV

RULES AND REGULATIONS REGARDING MARRIED STUDENTS

> The public schools of the United States were organized to educate pupils between given ages. There is no statutory regulation against the attendance of married boys and girls, and a board of school control has no discretionary right to discriminate against married pupils within the prescribed age limit by refusing them admittance to the public schools.[1]

There can be little doubt that the value of a high school education has taken on increased importance in our society today. Enrollment in the high school is growing tremendously and the number of students graduating is increasing each year. More students are attending our schools and more of those attending are completing the requirements.

This situation, coupled with the fact that youngsters appear to be marrying at a younger age than before, is presenting public school officials with many perplexing problems. Hansen[2] expresses his views in the following manner:

> Teen-age marriages are on the increase. Census records show that in 1890 the median age for brides was twenty-two years, it is now slightly over twenty years. The median for Gay Nineties grooms was just over twenty-six years; for those of the anxious Sixties, just under twenty-three years. This drop in the median marriage age

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[1] John Messick, The Discretionary Powers of School Boards (Durham, 1949) p. 102.

[2] Earl H. Hanson, "Teen Age Marriages," N.E.A. Journal (September, 1961) p. 26.

> for both boys and girls means that the lower quartiles fall into teen years and that many a teen-age marriage is left, like an unwanted foundling, right on the high school's door step.

As a result of his research in this area Havighurst[3] stated:

> In this day of competition for leadership among the nations of the world in the economic, social, political, and scientific areas of living, it is rather surprising to find that there are many who do not take equal pride in knowing that the United States leads the modern industrial societies in having the youngest average age for marriage.

Another author makes this comment:

> With the increase in the number of early marriages, with the increase in the enrollment in the public schools, and with the social and economic pressures being placed on the desire for a high school diploma have come problems heretofore unknown to the schools.[4]

The growing number of teen-age marriages has created concern among educators for the welfare, not only of those young people who are marrying, but for their associates as well. It is only natural that we find varying opinions as to the best course of action to take concerning the future attendance and participation of these young people in the public school program.

There are many administrators who feel that if married students are allowed to take part in the regular school program, other students will follow their example of early marriage. Still others feel that youngsters of school age should not be denied the advantages and opportunities offered by the public schools simply because they are married.

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[3]Robert Havighurst, "Early Marriages and the Schools," The School Review, LXIX (Spring, 1961) p. 36.

[4]Anne Flowers and Edward C. Bolmeier, Law and Pupil Control (Cincinnati, 1964) p. 44.

Those who would restrict participation and attendance of married students list various reasons for their objection. Some of the major reasons are listed below:

1. Married pupils exert an undesirable influence on other students.

2. Married students discuss affairs of too personal and intimate matters.

3. Married students attend school irregularly.

4. Married students expect special concessions.

5. Married students become pregnant or create rumors of pregnancy.

6. Married students bring criticism of the school from the community.

Those who oppose any restrictions on married students contend that these are imagined and unjustified fears and that, in fact, in many instances just the opposite is true. In 1956, Landis,[5] made an extensive study of high school student marriage. He questioned two hundred eighty-six principals regarding the problem and found that some of them expressed the opinion that the presence of married pupils had some beneficial effects upon the school operation. The following reasons were among those listed:

1. Married pupils are more stable, dependable, mature, industrious, and serious in purpose.

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[5]Judson Landis, "Attitudes and Policies Concerning Marriages Among High School Students," Marriage and Family Living, XVIII (1956) p. 134.

2. Married pupils can make a contribution to certain classes such as group guidance classes, family living classes and homemaking classes.

3. Married pupils' maturity has a good effect on other pupils.

4. Other pupils who marry feel encouraged to continue in school.

In any event, it seems apparent the problem is very real and one which school administrators are forced to face.

What, then, are the legal implications involved that will enable educators to make decisions relative to facing the problem of married students? Howard Matthews,[6] in an article written for School Life points out that few, if any, states have statutes to guide officials in the decisions that they must make. There are, however, attorney generals' opinions in some of the states that carry the force of law until superceded by legislation or actions of the courts.

Typical of these opinions are those rendered by the Attorney General of Oklahoma who has given two opinions relative to the status of married students in the Oklahoma Public Schools. The first of these opinions rendered November, 1958 and reported in School Laws of Oklahoma, simply states: "Married child entitled to same [extra-curricular and other] privileges other pupils have."[7] The other opinion delivered February 24, 1960 says: "Married students cannot be denied privilege of going on senior class tour solely because students are married."[8]

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[6]Howard Matthews, "The Courts and Married Students," School Life, XLIV (November-December, 1961) p. 5.

[7]State Department of Education, School Laws of Oklahoma (1965) p. 44.

[8]Ibid., p. 45.

Specific statutory provisions are lacking and attorney generals' opinions do not constitute final authority. We must look to the decisions of the courts, who do have the final authority, to determine their interpretation of the reasonableness of rules and regulations in this area.

Drury and Ray[9] report that: "Although the public and school officials during the past several years have expressed considerable concern about the matter of student marriages, there has been a scarcity of judicial decisions in such areas." Flowers and Bolmeier[10] found that eleven cases dealing directly with teen-age marriages and the schools have appeared in the higher courts since 1900. Seven of these have occurred since 1957. The writer of the present study, reviewing cases reported in the period from 1942 to the present time, located nine cases related to married students and the public schools. All of these have occurred since 1957 and seven of the nine since 1960. It becomes apparent that although the total number of cases since the turn of the century has been small, activity in the present decade has been increasing.

Attempts to Prohibit Attendance of Married Students

The trend seems to be that courts will hold that marriage alone is not sufficient grounds to deny a person the right to attend schools. A case frequently cited in this regard is one decided by the Supreme

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[9]Robert L. Drury and Kenneth C. Ray, Principles of School Law (New York, 1965) p. 54.

[10]Flowers and Bolmeier, p. 49.

Court of Kansas in 1929.[11] This was a case in which a young girl had withdrawn from school at the end of the first semester of the 1927-28 school year; was married in February, 1928; lived with her husband only a short time and gave birth to a baby in August, 1928. She enrolled in school at the beginning of the 1928-29 school year and attended only one day when she was informed by officials she could not remain in school because she was married.

The court, ruling in favor of the student, said:

> The public schools are for the benefit of children within school age, and efficiency ought to be the sole object of those charged with the power and privilege of managing and conducting the same, and while great care should be taken to preserve order and discipline, it is proper also to see that no one within school age should be denied the privilege of attending school unless it is clear that the public interest demands the expulsion of such pupils or a denial of his right to attend. On the record submitted here, we are of the opinion the evidence was insufficient to warrant the board in excluding plaintiff's daughter from the schools of Goodland. It is the policy of the state to encourage the student to equip himself with a good education.

In 1957 the Supreme Court of Tennessee was called upon to decide the reasonableness of a board rule which called for automatic expulsion for the remainder of the current school term for pupils who marry. The complete rule as reported in Thompson v. Marion County Board of Education[12] states:

> Any student who marries during the school term shall be automatically expelled for the remainder of the current term. If the marriage takes place during vacation, such student shall not be allowed to attend any county school during the next term succeeding.

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[11] Nutt v. Board of Education of Goodland, 278 Pac. 1065 (Kansas, 1929).

[12] Thompson v. Marion County Board of Education, 302 S.W. (2d) 57 (Tennessee, 1957).

The rule was contested by the father-in-law of a young school girl on the basis that it was unreasonable and arbitrary. During the course of the testimony it was pointed out that the regulation was passed as a result of the recommendation of four high school principals. The court, in its ruling upholding the reasonableness of the rule in question, stated:

> We are accustomed to accept the testimony of experts in the various fields of human activity as to what is reasonable and necessary for the welfare of the particular activity as to which this expert therein is testifying. No reason is suggested as to why this practice should not be followed when the witness is an expert in the field of operating the public schools. Certainly, the principals of the high schools in question should be regarded by reason of training, experience and observation as possessing particular knowledge as to the problem which they say is made by the marriage and uninterrupted attendance of students of in their respective schools. It is to be gathered from the statement of these teachers that some regulation is necessary. A milder one than they adopted by this resolution is not suggested, nor does one occur to this court. Based on this line of reasoning, the conclusion must be that the regulation has a bearing on the progress and efficiency of these schools.

The opinion of the court further points out that:

> Boards of Education, rather than courts, are charged with the important and difficult duty of operating the public schools. So it is not a question of whether this or that individual judge or court considers a given regulation adopted by the board as expedient. The court's duty, regardless of its personal views, is to uphold the board's regulation, unless it is generally viewed as being arbitrary and unreasonable. Any other policy would result in confusion detrimental to the progress and efficiency of our public school system.

The Common Pleas Court of Ohio held that a school regulation requiring married students who became pregnant to withdraw from school immediately upon knowledge of pregnancy, was not an abuse of discretion. This decision was reached in spite of an attorney general's opinion to the contrary. The attorney general had stated that a board of education

may not adopt a regulation prohibiting attendance at school of all students under the age of eighteen who married or, when married, became pregnant. It was his opinion that such regulation would be contrary to the compulsory education laws. As reported in State v. Chamberlain,[13] his opinion further stated that he:

> ...did not deny the probability that at some stage of the pregnancy, attendance to school might present a danger which a pregnant spouse or a board of education might wish to avoid. A regulation at such stage of the pregnancy where the bodily condition of the child is an important element would appear to be permissible, provided, of course, it is confined to protecting the child and not as an unwarranted and elusive punishment.

The court, in its opinion, commented that it appeared to them the disagreement between the attorney general and the board was one of timing. It further stated that:

> In our opinion, to require the board of education to adopt the view expressed by the attorney general rather than permit it to make its own determination based upon the experience of those skilled in the administration of school affairs, would constitute the court controlling the board's discretion. This the law does not permit. It is our opinion that no abuse of discretion has been shown by the board in the adoption of the regulation here in issue. Said regulation, particularly as it affects the relator herein, is neither unreasonable, arbitrary, nor contrary to the law and the board did not abuse its discretion in applying said regulation to relator herein when it did.

The Court of Appeals of Kentucky in 1964 heard a case in which an action was brought to test the validity of a school board regulation requiring any student who married to withdraw from school, subject to being readmitted after one year.[14] The board had justified its

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[13] State v. Chamberlain, 175 N.E. (2d) 539 (Ohio, 1961).

[14] Board of Education of Harrodsburg v. Bentley, 383 S.W. (2d) 677 (Kentucky, 1964).

position by stating that the marriage of school students created undue excitement prior to and immediately after the marriage and this created a disruptive situation in the school. However, it was discovered that in practice the school had allowed students who marry to complete the six week term prior to withdrawing from school. The court finding that the rule in question was "arbitrary and unreasonable, therefore void," pointed out that if there was undue excitement immediately prior to and after the wedding, the board had defeated its own purpose in allowing married students to complete the six weeks term before withdrawing.

The latest case whereby a school board attempted to exclude married students from school attendance is one heard before the Court of Civil Appeals of Texas in 1966.[15] This was an appeal from a temporary injunction requiring the school board to admit the appellee as a student at Alvin High School.

The appellee was a sophomore at Alvin in January, 1965. At this time she withdrew from school and married. Subsequently a child was born to the marriage. Appellee later attempted to enroll in Alvin School and was denied admission because of a rule adopted by the board that forbids admission of a married mother. The rule in question states:

> A pupil who marries can no longer be considered a youth. By the very act of getting married he or she becomes an adult and assumes the responsibility of adulthood. As a married student, he or she shall not serve as an officer of the student body or any class or school organization. A married pupil shall not represent the school in an interschool contest or activity and shall not participate in

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[15] Alvin Independent School District v. Cooper, 404 S.W. (2d) 76 (Texas, 1966).

> school activities other than regular classes. If a married pupil wants to start her family, she must withdraw from public school. Such a pupil will, however, be encouraged to continue her education in the local adult education courses and correspondence courses.
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> The court, ruling against the school, stated:
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> The undisputed evidence shows that she [appellee] cannot be admitted to the adult education program until she is twenty-one years old. It also shows that the correspondence courses are in homemaking and are not of a nature as to entitle her to credit for entry to college. The practical and legal effect is that appellee is deprived of a legal education, except as she might obtain it at her own expense in a private or parochial school...We are of the view that appellants are without legal authority to adopt the rule or policy that excludes the mother of a child from admission to school if she is of age for which the state furnishes school funds.

Attempts to Limit Participation of Married Students

Many school districts feel that married students cannot and/or should not be denied admittance to school but also feel, for a variety of reasons, that they should not be allowed to participate in extra-curricular activities.

In all of the cases reported during the period of time under study, each case involved members of athletic teams who desired to continue participation after they married. The courts, in every case, upheld the authority of local boards of education to make such rules and regulations, however, a review of the conditions of each case and the reasoning of the courts therein gives an indication of what the courts may consider reasonable and why.

The first case was heard before the Court of Civil Appeals of

Texas in 1959.[16] It was a proceeding for an injunction to restrain enforcement of a school board resolution providing that married students or previously married students should be restricted wholly to classroom work and barring them from participation in athletics, or other exhibitions and prohibiting them from holding class offices or other positions of honor other than academic honors.

The appellant was a high school student who was married before the board's policy was adopted. He had been a letterman on the football team the previous year and had planned to participate again. He felt that he had the necessary ability and was looking forward to an athletic scholarship to enable him to attend college.

The court denied the injunction and stated:

> With regard to authority of school trustees, it is uniformly held that the courts will not interfere in such matters unless a clear abuse of power and discretion is made to appear. ...Undoubtedly, it [the regulation] had a direct relationship to the objectives sought to be accomplished by school authorities...That of discouraging the marriage of "teen-age" students.

A similar case was heard the next year by the Supreme Court of Michigan.[17] This was a mandamus compelling the board of education to allow a married high school student to play football. The year in question was 1958 and the student had since graduated from high school.

The court affirmed the decision of the lower court which had upheld the school board regulation. However, the decision was affirmed

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[16] Kissick v. Garland Independent School District, 330 S.W. (2d) 708 (Texas, 1959).

[17] Cochrane v. Board of Education of Mesick Consolidated School District, 103 N.W. (2d) 569 (Michigan, 1960).

by a divided court with four justices for affirming and four for reversing. One of those voting for affirming contended he did so only because he felt the question was moot.

In 1962 the Court of Common Pleas of Ohio heard a case involving a mandamus proceeding to compel the board of education to allow a married high school student to participate in extracurricular activities.[18] The writ was denied even though there was an opinion of the Attorney General of Ohio to the effect that a board of education may not lawfully adopt such a regulation.

The relator, in this instance, was a male married student who was seventeen years of age and who had been extremely active in extracurricular activities, athletic and non-athletic as well. He was an outstanding basketball player on a team which won the state championship the previous year, an above-average student, and very popular with students and teachers.

The court, in its opinion, cited instances of the increased number of teenage marriages and the number of these students who drop out of school. The court further stated that:

> It is a matter of common knowledge that the student who excels in athletics sets a pattern of conduct which his associates in the school are proud to follow. The "hero" in the eyes of his followers, can do no wrong. Students today are more ready to accept the action of their peers as the thing to do. If married students are in a position of idolization, the more desirous is the group to mimic.... Even though the attorney general states that "to deprive a student from participating in such activities for the dubious purpose of punishing marriage would amount to an abuse of discretion;" it is apparent he viewed the regulation under consideration as unwise and condemned it for

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[18] State v. Stephenson, 189 N.E. (2d) 181 (Ohio, 1962).

> that reason. He thereby invaded a field of inquiry (the wisdom or unwisdom of the legislative act) denied, by law, both to him and this court....A board of education must not permit, as is evident in this instance this board did not permit, its judgment as to what is beneficial or what is detrimental to the high school student to be affected by the unrestrained enthusiasm of the adult population for athletic contests.

The Supreme Court of Utah also upheld a similar school board regulation in 1963.[19] The court, in its opinion, differentiated in various types of extracurricular activities by stating:

> Unlike the activities of band, speech, drama and choir, which are given as regular classes for credit, participation in extracurricular activities associated therewith, as well as activities as a class officer and member of an honorary group or school sports team, lies within the discretion of a school board as activities supplementary to regular academic curriculum, and is not a part of the school program which constitution requires to be open to all children.

Does this imply that in the event a school allows participation in athletics to count as credit in physical education, that the rule would be unreasonable? Does it also imply that a married person may enroll in band, but may not be permitted to take part in band activities? It appears to the writer that the court's attempt to distinguish "activities" given for credit from "extracurricular" activities clouds the issue. However, the court, in later remarks in its opinion states very well what appears to be the accepted principle relative to participation of married pupils in extracurricular activities by stating:

> Courts are not concerned with the wisdom or propriety of school board rules and regulations prescribing qualifications for participation in extracurricular activities and

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[19] Starkey v. Board of Education of Davis County School District, 381, P. (2d) 718 (Utah, 1963).

> so long as the rules promote the objectives of the school and so long as the standards of eligibility are based upon uniformly applied classifications bearing some reasonable relationships to the objectives, rules will not be set aside as capricious, arbitrary, or unjustly discriminatory. ...An individual has a constitutional right both to attend school and to get married, but he has no "right" to compel board of education to allow him to participate in school extracurricular activities when board has decreed marriages to be a barrier to participation therein."[20]

The latest available case the writer was able to locate was heard before the Supreme Court of Iowa.[21] The facts in this case are similar to the others in that it involved a married male student who wanted to participate in basketball during his senior year. The district court had granted the boy relief and the board of education had appealed. Prior to the appeal the boy had graduated. It was requested that the case be dismissed for the reason that the question was now moot since the boy had graduated. Refusing to dismiss the case the court contended:

> Here the challenged rule remains and we are persuaded the school officials are reasonably and justly entitled to a determination of its legality and enforceability. Furthermore, the very urgency which presses for prompt action by public officials makes it probably any similar case arising in the future will likewise become moot by ordinary standards before it can be resolved by the court. Under these circumstances, the issue presented in this case should now be adjudicated.

The court then proceeded to reverse the decision of the lower court, saying:

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[20] Ibid.

[21] Board of Directors of Independent School District of Waterloo v. Green, 147 N.W. (2d) 854 (Iowa, 1967).

> The duty of all courts, regardless of personal views or individual philosophies, is to uphold a school regulation unless it is clearly arbitrary and unreasonable. Any other approach would result in confusion detrimental to the management, progress and efficient operation of our public school system. It would in effect serve to place operational policies of our schools in the hands of the courts which would be clearly wrong if not unconstitutional.

Attempts to Compel Attendance of Married Students

The attempts to prohibit the attendance of married students have been the center of much publicity and controversy. There is, however, another question presented by early marriages. There are three cases on record which grew out of attempts to compel the attendance of married students under the compulsory attendance laws present in most states.

The first case dealing with the problem of compulsory attendance of married students was decided by the Supreme Court of Louisiana.[22] A fifteen year old girl was charged with juvenile delinquency consisting of continued truancy from the school in which she was enrolled. Although she had been married for approximately four months, the judge of the juvenile court ruled that marriage did not exempt her from the compulsory attendance law and he committed her to the State Industrial School for Girls for reasons of delinquency. In the judgment of the juvenile court the husband of the girl should be held responsible for her school attendance.

The Supreme Court, dismissing the case, stated:

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[22] State v. Priest, 27 So. (2d) 173 (Louisiana, 1946).

> The marriage relationship, regardless of the age of the persons involved, creates conditions and imposes obligations upon the parties that are obviously inconsistent with compulsory school attendance or with either the husband or wife remaining under the legal control of parents or other persons. Though young, the husband is none the less required to support his wife and family. The wife, in the event there should be a child in the family, could hardly be expected to attend school during the weeks preceding or following its birth.

Commenting on the allegation that the husband has control of his wife and is therefore responsible for her school attendance the court stated, "No reasonable man, particularly one who has been married for many years, would contend that the husband has control or charge of his wife in the manner formerly exercised by the parent or guardian."

Three years later the Supreme Court of Louisiana was again called upon to decide another case of similar nature.[23] Testimony in this case revealed that a fourteen year old girl was placed in a detention home pending investigation for her acts of truancy. She was released in the custody of a lady who promised to return her to the detention home after church.

During the time she was gone from the home she married, with the consent of her mother. She lived with her husband a few days and was returned to the detention home. Proceedings were immediately instituted for the girl's release. The lower court decided that she was a neglected child and, as such, in need of the care and protection of the state in order that she might be prevented from assuming the duties and responsibilities of married life. She was then committed to the State Industrial School for Girls.

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[23] In re State in Interest of Goodwin, 39 So. (2d) 731 (Louisiana, 1949).

The Supreme Court, frequently citing the Priest case, held that the marriage was valid and that she was emancipated from compulsory school attendance by reason of the marriage. The court further stated:

> ...although until she reaches the age of eighteen she is not relieved of all the disabilities that attach to a minority by this emancipation, she is relieved of parental control and,..., is no longer amendable to the compulsory attendance laws of the state. Furthermore, having acquired the status of a wife, it is not only her right but also her duty to live with her husband at their matrimonial domicile and to follow him wherever he chooses to reside.

The only other case of this sort, to be decided by a higher court, was presented to a New York Court in 1962.[24] This case involved a married girl fifteen years old. She had registered for school in the fall but failed to attend. The New York law requiring school attendance of all children between the ages of seven and sixteen did not list marriage as an exception to this law.

The court, ruling that under the circumstances the girl was not a person in need of supervision, stated:

> Times and the mores of people have changed since the legislature first created compulsory education. It is doubtful that any thought was given then to the existence of a situation such as is now before the court relative to school attendance. ...The unquestioned advantages of school attendance by minors below sixteen years of age must be equated against the harmful effects, if any, of forcing the association of a married fifteen year old female with school children of such young and impressionable ages, especially where the former is not disposed to attend the school.

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[24] In re Rogers, 234 N.Y.A. (2d) 172 (New York, 1962).

Summary

The fact that more students of high school age are marrying today than formerly and are remaining in school is presenting public school officials with a very real problem. School administrators and boards of education have reacted in a variety of ways in their attempts to find solutions to the problem. Some have simply accepted the married students with no differentiation between married and other pupils. Others have attempted, through rules and regulations of the board of education, to restrict the attendance and/or the participation of married students.

Attempts to restrict have centered primarily around the following types of rules and regulations; complete exclusion of married students; complete exclusion of married mothers; suspension of married and/or pregnant students for a period of time and allowing admission later; and restrictions barring participation by married students in extracurricular activities.

Of the court cases reviewed in the period included in this study, three dealt with temporary suspension of married students, one dealt with exclusion of married mothers, and five dealt with restriction of participation in extracurricular activities. These nine cases, all of which have occurred since 1957, constitute all the cases that attempt to prohibit the attendance of married students or restrict their participation, to reach the higher courts during the last twenty-five years. Three cases where attempts were made to apply to compulsory attendance laws to married students were also decided during this period.

The decision reached by the courts in the above mentioned cases tend to indicate that the current thinking of the courts regarding the status of married students in the public schools can be summarized as follows:

1. School boards cannot legally deny admission to the public schools on the basis of marriage alone.

2. School boards cannot permanently exclude married mothers from the public schools.

3. School boards may legally suspend married students temporarily, if it can be shown that the suspension is necessary to the efficiency, progress, and management of the schools.

4. School boards may legally restrict the participation of married students in extracurricular activities if they can reasonably show that such restriction is in the best interest of the school.

5. School boards may not legally require the attendance of married students.

It should be pointed out that the fact that courts have so far upheld the "legality" of board regulations prohibiting married students from participating in extracurricular activities should not be construed as judicial concurrence on the "propriety" of the regulations. Some of the language used by the courts in their opinions might lead one to believe that future decisions in this area might very well result in the opposite decision.

The practice of limiting the participation in extracurricular activities of affected students is also utilized by local school authorities in attempting to curb membership in secret societies.

Chapter V concentrates on the problem of sororities and fraternities for school age children.

CHAPTER V

RULES AND REGULATIONS REGARDING MEMBERSHIP IN SECRET SOCIETIES

> It is pertinent to state that none of our liberties are absolute; all of them may be limited when the common good or common decency requires...Freedom after all is not something turned footloose to run as it will like a thoroughbred in a blue grass meadow.[1]

The problems relating to high school secret societies have been prevalent on the American educational scene for several years. Fraternities at the high school level began to appear in the last decade of the nineteenth century. Gates[2] points out that:

> Secret societies...made their appearance early in the educational institutions of America with the founding of Phi Beta Kappa, the first fraternity, at the College of William and Mary in 1776; but not until one hundred years had elapsed was Alpha Pi, a literary society and the first Greek letter society in the public high school founded.

From the beginning there was opposition by school authorities to the secret societies. Without denying the commendable purposes for which many of the societies were formed, many educators have gone on record as being opposed to the organizations. As early as 1904 Gilbert

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[1] Satan Fraternity v. Board of Public Instruction for Dade County, 22 So. (2d) 892 (Florida, 1945).

[2] Thomas Gates, "Passage of the California Anti-Fraternity Statute," California Journal of Secondary Education, XXX (February, 1955) p. 83.

Morrison,[3] in an address to members attending the forty-third annual meeting of the National Education Association, reported the findings of a letter sent to two hundred principals requesting their feelings toward secret fraternities in the high school. Of the one hundred eighty-five responses received, only four did not express disapproval.

Singleton[4] in an article for School Activities expresses his disapproval by contending that secret societies, "...in many instances have become more than just a nuisance...they have become an actual menace to the democratic thinking of the remainder of the students in the school."

Two other authorities voice emphatic disapproval with the secret societies by making the following comments:

> It is in the framework of the responsibility of the school to all the children, of all the people, with equal recognition for each, that the place of fraternities and sororities in high school life is to be considered. As to the desirability of secret societies in a modern democratic school program there is overwhelming agreement on the part of thoughtful school people. Exclusive social clubs have no place in the secondary school. ...Secret societies are out of keeping with the purpose of the American high school and should not be tolerated.[5]

It should be pointed out that although the opposition by schoolmen was widespread and vocal, it was not unanimous. Some school officials have expressed the belief that it is neither within the

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[3]Gilbert Morrison, "Secret Fraternities in High Schools," Journal of Proceedings and Addresses of the Forty-Third Annual Meeting of the National Educational Association (June, 1904) p. 484.

[4]Merle D. Singleton, "Secret Societies and Undemocratic School Activity," School Activities, XXI (November, 1959) p. 81.

[5]Edgar G. Johnston and Roland C. Faunce, Student Activities in Secondary Schools (New York, 1952) p. 156.

power nor is it the responsibility of the school to regulate the activities of youth which occur out of school hours and off the school campus. Flowers and Bolmeier[6] point out that the advocates of this position maintain that, "...any regulatory action concerning membership in fraternities or sororities should be an invasion of parental rights and not in the domain of the school." The literature, court cases, and statutes passed, however, tend to show that this is definitely a minority opinion among school personnel.

School authorities began to realize that secret societies were not simply another teenage fad but rather an association of pupils which brought to the school complaints from irate or disappointed parents whose children were not accepted for membership; undesirable influences which were evidenced in school elections, social affairs, extracurricular activities, and school spirit; and embarrassment and criticism for activities such as weekend trips, dances, and beach parties that did not have the sanction of the school but claimed the name of the school. With this realization, school administrators began to request boards of education, state departments of education, and state legislatures to adopt such rules and regulations as were necessary to prohibit student membership in such societies.

At the present time more than half of the states of the nation have by statute or regulation expressed their disapproval of the

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[6]Anne Flowers and Edward C. Bolmeier, Law and Pupil Control (Cincinnati, 1964) p. 18.

societies. Shapiro[7] conducted a study of the states that have legislated against fraternities and soroities and reported the following findings:

> Statutes banning fraternities, sororities, and secret societies, whose membership comprise pupils in the public elementary and secondary schools, date from 1907 when Indiana, Kansas, and Minnesota first enacted prohibitory legislation. Since that year the number of anti-fraternity laws have grown to twenty-six. Most of these laws were adopted before 1930. Missouri is the only state to pass this type of legislation within the past fifteen years.

Many of the remaining states have provisions of other kinds to prohibit or discourage membership of high school students in these societies. Some attempt to accomplish this end through the promulgation of a rule by the state board of education; in others, local board of education rules and regulations may be a deterrant to membership.

The statutes and school board rules on this subject make membership unlawful and refuse diplomas, credit for school work, or participation in extracurricular activities, and frequently permit suspension or expulsion as the penalties. Several statutes exempt secret societies which are sanctioned by the local board of education, or name several organizations which are exempt.

In view of the number of statutes, outspoken disapproval of school authorities, and variety of school board regulations formulated

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[7]Freida S. Shapiro, "Fraternities, Sororities, and Secret Societies in the Public Schools," National Association of Secondary School Principals' Bulletin, XLIX (September, 1965) p. 49.

in opposition to these organizations, one might expect that the problems relative to secret societies would have long since disappeared. Apparently this is not the case. Johnston and Faunce[8] contend that, "Far from withering away, secret societies have become more influential, more numerous, and more disturbing in the life of the school."

Time magazine reports incidents of students who are unable to attend school due to injuries sustained in initiations, of parties in downtown hotels, of athletes' refusing to play in competition with non-fraternity athletes, of discrimination in selecting members based upon nationality or wealth, and of stealing in order to play fraternity assessments.[9]

Hamilton[10] tells of the pathetic letters written to school officials relating to utter disillusionment and unhappiness of a child because he has been unable to pledge a coveted group. He also states that, "Despair in some instances has grown to such proportion as to claim the life of its victim."

The public schools of Fort Worth, Texas, are currently involved in turmoil over the question of secret societies and have been for at least a year. Education News reports the following details relative to the situation:

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[8]Johnston and Faunce, p. 157.

[9]"Gang Busters," Time. LIII (January 17, 1949) p. 46.

[10]Virginia Hamilton, "Secret Societies in American High Schools," National Association of Secondary School Principals Bulletin, XL (October, 1956) p. 23.

> Charity clubs in Fort Worth High Schools, which the board of education officially banned a year ago, have finally been disbanded. The action resolved, temporarily at least, a controversy of wide local impact that had been spiced with civil suits against the school system. ...Superintendent Juluis Truelson says he has received resignations from the clubs of the twenty-three students whose parents filed suit challenging the 1949 state law declaring such clubs to be illegal. The suit was denied in a state and federal court but is scheduled for hearing in January. ...Board action against the clubs, defined as fraternities and sororities, was taken in November, 1966. Disbanding of the clubs followed an edict by Superintendent Truelson this fall that students sign a supplementary enrollment form stating that they were not members of secret organizations.[11]

The article points out that those students who refused to sign were suspended. Indicating that the question still may not be permanently settled, it further stated that, "The parents of two junior high school girls, who were suspended for refusing to comply, filed another suit in United States District Court asking that the state law be declared unconstitutional."

In view of the widespread criticism directed toward them, it is surprising that this type of organization has been able to survive. Obviously many parents and some school men feel they are worthwhile organizations that should be preserved. Hamilton[12] lists the following as typical of the arguments presented by the proponents of high school secret societies:

1. They have worthy purposes and high ideals.
2. They encourage members to participate actively in school affairs.

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[11]Jack B. Tinsley, "H. S. Clubs Discontinued in Fort Worth," Education News, I (October 30, 1967) p. 8.

[12]Hamilton, p. 24.

3. They aid in developing good scholarship, leadership, and organizational ability.

4. They encourage respect for authority.

5. They provide opportunities for heterosexual social activities.

6. They keep some pupils in school who might otherwise drop out.

Singleton[13] lists the following as practices of the clubs that frequently provoke the most criticism:

1. Initiation practices that range from unbecoming to direct brutality.

2. Questionable conduct at meetings—carried on without restraint of adults or sponsors.

3. Undemocratic selection of members.

4. Use of the organization to secure special privileges.

As could be expected, individuals and groups have petitioned the courts on numerous occasions to settle the conflicts that have arisen out of state legislation or local school rules dealing with the membership of public school students in secret societies. Flowers and Bolmeier[14] state that during the past century legislation and local rules have been tested in the appellate courts of seventeen states and in two instances have reached the United States Supreme Court. They also state the general accepted principle governing the courts in these matters:

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[13] Singleton, p. 82.

[14] Flowers and Bolmeier, p. 39.

> In each case the court, reluctant to interfere with the operation of the schools, has not attempted to pass upon the wisdom or expediency of the rules in question; but rather the court has rendered its judgment solely upon its consideration of the reasonableness and constitutionality of the actions taken.

A review of the court cases and an examination of the reasoning of the justices should provide insight into the manner in which the courts view this question. The cases reviewed will be those in states that have specific statutes relative to the question and those in states lacking specific statutes.

Cases Involving Rules and Regulations Supported by Specific Statutes

One of the first cases to challenge a state statute relative to prohibiting membership of public school children in secret societies was decided in California in 1912.[15] The statute forbade any elementary or secondary school pupil membership or participation in organizing any fraternity, sorority, or secret society which drew its membership partially or entirely from pupils attending the public schools. The statute empowered boards of education to make any local rules or regulations necessary to carry out the enforcement of the act.

The schools of San Francisco passed such a regulation and later found it necessary to suspend one of its pupils for failure to comply. The district court of appeal ruled that the statute was adopted to overcome the ill effects of societies on young, unformed characters

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[15] Bradford v. Board of Education of City and County of San Francisco, 121 Pac. 929 (California, 1912).

and was applicable to all within the designated class, that it did not contravene provisions in the constitutions of California or the United States, and that for these reasons it was valid.

The courts also contrasted the effect of secret societies upon high school students as opposed to college students by stating:

> ...it is quite apparent to us that the younger and more immature pupils of the public schools may quite properly form a class and be made the subject of this character of legislation. Normal schools and colleges are attended by students who are preparing for serious affairs of life; and being older in years and with wider experience are better fortified to withstand any possible hurtful influence attendant upon membership in secret societies and clubs than the younger pupils attending elementary and secondary schools, who are less experienced and more impressionable.

A Louisiana statute authorizing boards of education to abolish secret societies was challenged as an invasion of parental authority and a deprivation of vested rights. The case, the first of its kind to appear during the twenty-five year period under study, was carried all the way to the Supreme Court of the United States.[16] The Supreme Court affirmed the judgment of the lower courts validating the Louisiana Statute in a per curiam decision with no opinion being written.

The Florida statute barring secret organizations in the public schools was challenged, by members of a fraternity, on the grounds that the title of the act was insufficient to denote the contents and that it deprived the appellants of their right to life, liberty,

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[16] Hughes v. Caddo Parish School Board, 323 U. S. 865 (Louisiana, 1944).

pursuit of happiness, due process of law, free speech, free assembly, and redress of grievances. The Supreme Court of Florida found no merit in these statements.[17] Citing instances where similar acts in other states had been upheld and noting that the conduct and discipline of public schools were vested in boards of public instruction the court contended:

> We cannot see that the question of state v. parental control enters into the picture in any manner. The public school has a very definite place in our scheme of things and the question in every case is whether or not the high school fraternity or sorority disrupts or materially interferes with that purpose...there has long been a feeling in this country that this question requires an affirmative answer, and the legislature has concluded the matter in this state.

Relative to the submission of the rights of the individual, the court pointed out:

> ...it is pertinent to state that none of our liberties are absolutes; all of them may be limited when the common good or decency requires...Freedom in a democracy is a matter of character and tolerance. The ideal recipient of it is one who voluntarily refuses to sacrifice the common good to personal possession.

Seven years later the Oregon Supreme Court was called upon to decide a case involving a rule of a local board of education to enforce a state statute forbidding membership in secret societies.[18] The Oregon statute had been passed in 1909. In 1949 the Multnomah County Board of Education passed a resolution providing suspension or expulsion as the penalty for membership in secret societies. The rule

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[17] Satan Fraternity v. Board of Education for Dade County, 22 So. (2d) 892 (Flordia, 1945).

[18] Burkitt v. School District Number 1, Multnomah County, 246 P. (2d) 566 (Oregon, 1952).

was challenged on the grounds that the organizations in question in this case were not secret and that the activities are carried on entirely outside the school and school hours; that enforcement of the rule would constitute an invasion of parental authority; and that the rule is arbitrary, discriminatory, and violates the right of assemblage guaranteed by the Oregon constitution.

The court found that the rule was within the authority of the school board, was reasonable, and was enacted in good faith. Deciding in favor of the board the court said, in part:

> There is nothing in the rule in question which prevents the minor plaintiffs from assembling and associating freely at any time and place, outside of school hours, approved by their parents, with the children from other high schools, public or private. This is their constitutional right. But they have no constitutional right to be members of clubs organized in the high schools, and composed of children from different high schools, and which the school board may have substantial reason for believing to be inimical to the discipline and effective operation of the schools. ...Here it seems to us, for the court to interfere with the action of the school authorities now challenged, would be little less than to constitute ourselves a school board for all the schools of the state. This we have neither the right nor the inclination to do.

In 1962 the Supreme Court of Ohio ruled on an action to enjoin enforcement of a school board regulation making membership in certain organizations a barrier to participation in certain high school extra-curricular activities.[19] The plaintiffs contended that enforcement of the regulation would amount to giving school authorities complete control of the pupils' activities and thus deny their parents the

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[19] Holyroyd v. Eibling, 188 N. E. (2d) 797 (Ohio, 1962).

right to select associates for their children away from school and after school hours.

Denying the appeal, the court stated:

> Our conclusions are that the board of education acted within the scope of its authority; that such authority is granted to the board by the statutes; and is also inherent to the board; that the provisions of the regulation are not unreasonable or arbitrary; that the enforcement of this regulation in a reasonable manner, which must be assumed, will not deprive the plaintiffs of any constitutional rights or natural privileges as citizens or pupils of the public schools; that this court has no authority to interfere with the exercise of the discretion vested in the board in this matter; and that the plaintiffs are not entitled to the relief sought.

The latest case dealing with this question is Robinson v. Sacramento City Unified School District, decided by the Third District Court of Appeal of California.[20] The Sacramento school board has a rule which prohibits the organization and existence of fraternities and sororities in the public schools. A member of a student club, called the "Manana," brought on action to have the rule declared void as it applied to her and her club.

The school board regulation contained the following definition as to what constituted a forbidden club under the resolution:

> A fraternity, sorority, or non-school club, membership in which is prohibited by this rule, is one in which the membership is composed wholly or partly of pupils of the public schools of this state and is perpetuated by taking members from the pupils enrolled in the public schools on the basis of the selection and decision of its own members.

The board rule had been made pursuant to a state statute which makes it unlawful for any public school pupil to join a fraternity or

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[20] Robinson v. Sacramento City Unified School District, 53 Cal. Rptr. 781 (California, 1966).

sorority. The statutes expressly authorize the school board to make enforce such rules and regulations as are necessary for the government and discipline of the schools under its charge.

The court, ruling that the statute, as well as the board of education regulation was valid and that the Manana Club was subject to be controlled, stated:

> However, even were we to adopt a narrower interpretation of "secret", the Manana Club would still fall within the statute's prescription. ...only twenty girls throughout the entire school system of the Sacramento area may be "rushed" during a semester. Candidates names are proposed by letters of recommendation and each candidate must be sponsored by three members.

Cases Involving Rules and Regulations Not Supported by Specific Statutes

Newton Edwards[21] points out "...no case has yet come into the courts involving the authority of school boards, in the absence of specific statutory authority, to suspend or expel pupils on the ground of membership in fraternities." All of the cases have involved attempts of the boards of education, acting under their general authority to manage the schools, to limit the privileges of pupils who maintain membership in fraternities.

Perhaps the leading case in point is that of Wilson v. Board of Education of Chicago.[22] The Chicago Board of Education adopted a rule

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[21] Newton Edwards, The Courts and the Public Schools (Chicago, 1955) p. 587.

[22] Wilson v. Board of Education of Chicago, 84 N. E. 697 (Illinois, 1908).

whereby all pupils who were members of a secret society should be denied the privilege of representing the school in any literary or athletic contest or in any other public capacity. Action was brought to enjoin the enforcement of the rule on the ground that it was unreasonable, that it was a violation of the natural rights of the pupils, and that it was an unlawful discrimination against those pupils who belonged to secret societies. The opinion of the court, quoted at some length because it points out several general principles that have guided subsequent courts, denied the injunction, stating:

> The power of the board of education to control and manage the schools and to adopt rules and regulations necessary to a proper conduct and management are, and must necessarily be, left to the discretion of the board, and its acts will not be interfered with nor set aside by the courts, unless there is a clear abuse of the powers and discretion conferred. Acting reasonably within the powers conferred, it is the province of the board of education to determine what things are detrimental to the successful management, good order and discipline of the schools and the rules required to produce these conditions. It was the judgment of the superintendent of schools of Chicago, as well as of the board of education, that membership in secret societies,..., was detrimental to the best interests of the schools. Whether this judgment was sound and well founded is not subject to review by the courts. The only question for determination is whether the rule adopted to prevent or remedy the supposed evil was a reasonable exercise of the power and discretion of the board...Assuming, as we must, that the adoption of the rule was not an abuse of power or discretion conferred by law upon the board, the courts cannot, and should not, interfere with its enforcement. Pupils attending the schools may decide for themselves whether they prefer membership in the secret societies, with the disqualification from representing their schools in literary or athletic contests or other public capacities, or whether they prefer these latter privileges to membership in said societies. It is for the board of education, within the reasonable exercise of its power and discretion, to say what is best for the successful management and conduct of the schools, and not for the courts.

Another of the older cases in this area should be noted and

reviewed briefly because it involves the only case decided by the higher courts which fails to uphold a regulation of the board of education to limit participation in extracurricular activities of those students who belong to secret societies. The case, Wright v. Board of Education of St. Louis, was decided by the Supreme Court of Missouri in 1922.[23]

The St. Louis Board of Education adopted a resolution stating its opposition to the existence, formation, and joining of secret societies in the schools of the city. It further stated that high school pupils who refuse to conform to this regulation would be declared ineligible to membership in organizations authorized and fostered by the school; that they would not be permitted to represent the school in any capacity whatsoever; and that they would not be allowed to participate in graduation exercises.

The court, in spite of testimony by the superintendent and other school officials, ruled that "...there is insufficient evidence to prove that secret societies are a detriment to the efficient operation of the schools." The court also stated that under the general authority which is granted to local boards one could not assume power not "clearly inferable from the purpose of the act" and that the school's domain "...ceases when the child reaches its home unless its act is such as to affect the conduct and discipline of the school. ...any other interpretation would remove all limit to the exercise of

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[23]Wright v. Board of Education of St. Louis, 246 S. W. 43 (Missouri, 1922).

discretionary power, leave it to the judgment, whim, or caprice of each succeeding board."

The court then decided the school regulation was outside the board's power and ultra vires. It should be pointed out that this decision is the exception to the general rule and the only one the courts have decided in this manner.

The first case of this kind to be reported in the last twenty-five years was decided in North Carolina in 1944.[24] The question to be decided by the courts in this instance was whether refusal to sign a pledge declaring non-membership in a fraternity constituted grounds for exclusion of a pupil from participation in extracurricular activities.

The Supreme Court of North Carolina, upholding the reasonableness of the rule in question stated:

> Schools to be effective and fulfill the purposes for which they are intended must be operated in an orderly manner. ...The right to attend school and claim the benefits afforded by the public school system is the right to attend subject to all lawful rules and regulations prescribed for the government thereof. ...The rule makes no attempt to deny plaintiff any instruction afforded by class work or by the required curriculum of the school. Nor is he denied the right to participate in extracurricular activities. It is merely made optional with him. ...He has now arrived at one of the crossroads of life. He must decide which course he will take, and the choice is his.

A school board regulation that extended the ban on secret societies to cover summer vacation period was ruled partially invalid

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[24] Coggins v. Board of Education of City of Durham, 28 S. E. (2d) 527 (North Carolina, 1944).

> to cover the period during which school was in summer session would be undue invasion of parental authority. In none of the Texas or other cases which we have examined have the courts sought to extend the rule of loco parentis to such length, and we are unwilling to extend it here. To do so would be shocking to every concept of parental authority.

The last case to come before the courts involving a regulation of a board of education denying participation in extracurricular activities to members of fraternities and kindred organizations was Isgrig v. Srygley.[26] The complainants in the case, decided by the Supreme Court of Arkansas, challenged the board of education regulation.

The court held that such rules were authorized by the constitutional provision providing for maintenance of an efficient system of free schools and by statute charging school directors with the duty of doing all things necessary and lawful for the efficient conduct of such schools.

The court further stated that:

> Whatever term may be used to illustrate the clash of will between teachers and pupils; whether insubordination, disregard of precept, or a failure to realize the importance of what is being done; it is without a doubt, that the effect of the action of the pupils in this case, was that they were saying "whether you like it or not, we are going ahead with our societies. You may coerce us into signing pledges, but you can't make us keep our promises." ...A situation of this kind was not contemplated by those who provided a free school system. Someone, at some point, must hold a responsible hand; and someone must say to our maturing citizens that barter by threat is not an approved method of getting results.

The court concluded by stating:

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[26] Isgrig v. Srygley, 197 S. W. (2d) 39 (Arkansas, 1946).

> Conceding, as anyone who reasons must, that group organizations may promote efficiency, and in some instances inculcate a sense of responsibility in young men and young women, it does not follow that school directors are without authority to impose reasonable restrictions in those instances where experience, observation, and a knowledge of the personality being dealt with suggests this course.

Summary

Fraternities at the high school level began to make their appearance in the last decade of the nineteenth century. From the beginning there was opposition by school authorities, and today more than half of the states have by statute or regulation expressed disapproval. In other states the local boards of education have, in some instances, discouraged membership in secret organizations by imposing regulations prohibiting members of fraternities and sororities from participating in extracurricular activity.

These statutes and school regulations have been challenged on numerous occasions and for a vareity of reasons. The most common grounds the rules were contested are that they are in excess of the board's authority; that they are an invasion of parental authority; that they are discriminatory, arbitrary and unreasonable; that they deprive members of their rights to liberty, property, or happiness without due process of law; that they violate natural rights; that they constitute unwarranted paternalism; and that they are a denial of the equal protection of the laws and an impairment of vested rights.

In those states where the legislature have specific statutes on the issue, the courts have upheld without exception the rights of the legislatures to enact laws prohibiting fraternities and sororities

in the public schools. They have also upheld the authority of local school officials in these states to take the appropriate action to enforce the statute. The most common forms of action have been suspension, expulsion, or denial of extracurricular activities for those who fail to conform.

No case has come before the courts involving the authority of school boards, in the absence of specific statutory authority, to suspend or expel pupils because of membership in secret organizations. In a number of cases, however, it has been held that a board of education may, under its general authority to manage the schools, limit the privileges of pupils who maintain membership in fraternities or sororities.

There are, however, two instances where the courts failed to uphold board actions in this regard. A Missouri court held that such regulations are outside the board's powers and ultra vires. A Texas court held that such rules were within the authority of the board except where the board attempted to extend its control into the summer vacation period.

In general, when there are no specific statutory regulations, it may be stated that whenever it can be shown that membership in secret societies operates against the best interest of the school, the courts will uphold the authority of boards of education to deny certain privileges to those students who refuse to sever their connection with secret organizations. The educational welfare of all the pupils is the paramount consideration.

It can be noted that the number of court cases pertaining to this problem is waning. This may be due, in part, to the fact that the legal principles involved are so firmly established that its reversal is considered unlikely. There are, however, two factors that could trigger a rash of court cases involving this issue. One is the current concern and emphasis of society and the courts over the inherent rights of the individual as opposed to the rights of government. In addition to this, some are predicting that the forced integration of the schools may cause the secret societies to flourish once again.

Chapters III, IV, and V have dealt with specific areas of student conduct and decorum that school authorities have attempted to control. Chapter VI focuses on the legality of the major methods employed by school officials to enforce their regulations and mentions other problem areas that sometimes necessitate regulation to insure the efficient operation of the schools.

CHAPTER VI

LEGALITY OF CERTAIN METHODS USED TO ENFORCE PUPIL CONTROL

> In each state may be found constitutional provisions for educating the youth of the state, but attendance in the public schools is not a guaranteed right to be exercised exclusive of all other considerations; rather it is a privilege which may be claimed by those young people who are willing to comply with the provisions of the constitutions and statutes of the state and to submit to such reasonable rules and regulations as the local school authorities may adopt.[1]

Pupils attending the public schools must obey the school laws and the reasonable rules and regulations of the local school officials. Superintendents, principals, and teachers are required to maintain discipline, the laws of the state, and the regulations of the local board of education. In this connection a teacher is considered to be in loco parentis which means that while the pupils are under the teacher's control he stands in the place of the parent in disciplinary matters.

Corpus Juris commenting on control of pupils and discipline states:

> As a general rule a school teacher, to a limited extent at least, stands in loco parentis to pupils under his charge and may exercise such powers of control, restraint, and correction over them as may be reasonably necessary to enable him to properly perform his duties as teacher and

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[1]Virginia Flowers, "Legal Aspects of Pupil Control," Dissertation Abstracts, XXIV (1963) p. 4060.

> accomplish the purposes of education, subject to such limitations and prohibitions as may be defined by legislative enactment.[2]

The courts have further established that:

> In the exercise of his power to control and maintain discipline in his class, a teacher may adopt any reasonable rule or regulation concerning matters not provided for by the rules prescribed by the school board and not inconsistent with some statute or other prescribed rule.[3]

It is readily apparent that the principle of in loco parentis is the basis of much of the justification for the authority of local school officials to make and enforce rules and regulations for the operation of the public schools. It is interesting to note that at least two authors feel that this important principle is declining. In an article for the Phi Delta Kappan they state:

> The principle of acting in loco parentis seems to be in considerable decline, particularly beyond the freshman level. The nurturant aspects of that principle have been on the wane for some time. Now students are challenging what has remained: the control and punishment aspects of acting in loco parentis. This decline is perhaps the fruit of the persistant emphasis on anti-authoritarianism in child rearing during the past decades. ...Perhaps administrators ought to relax and realize that they simply cannot control much of the behavior they might like to control. They could then turn their attention to what they can do: that is to fulfill an important educational function by providing more facilities for advice and discussion in these crucial areas.[4]

Although Katz and Sanford were referring to students of college age, if their comments are indicative of the current trend of thought in this area, the implications for public school administrators are

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[2] 56 Corpus Juris 852.

[3] Ibid.

[4] Joseph Katz and Nevitt Sanford, "New Student Power and Needed Reforms," Phi Delta Kappan, LVII (1966) p. 399.

significant. Few would deny that practices at the college level have some impact on the public schools. The age difference between college undergraduates and high school upper classmen is relatively small, and it is exceedingly hard to predict the exact age the public might decide on as the one that is valid for a strict interpretation of the in loco parentis principles. As evidence of this a recent issue of Education Summary reports that:

> High school students, influenced by their big brothers in college, are demanding a greater say in the way their schools are run. Case in point: California, where a statewide high school newspaper, consciously biased toward the political left, is coming off the presses once a month. Youngsters from around the state met this summer at a Student Power Conference in Palo Alto, where they decided to publish the newspaper, and agreed to formulate a written "student power" credo.[5]

If this type of action were to gain wide acceptance public school men could find themselves faced with completely unique situations. The possible problems could be tremendous.

Traditionally, suspension, expulsion, and corporal punishment have been the major types of punishment used by school authorities to deal with the more serious types of disciplinary problems. A review of the litigation in this area should provide some insight as to the types of regulations the conditions under which they were formulated and administered that the courts consider reasonable or unreasonable exercises of the authority of school officials.

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[5]Education Summary, XX (October 15, 1967) p. 1.

Suspension and Expulsion

It is generally accepted that the enjoyment of the right or privilege to attend the public schools is conditioned by the pupils' compliance with the reasonable rules and regulations promulgated by the school authorities. Violators of these rules may be punished by means of suspension or expulsion. The efficient operation of the school in meeting the aims for which it is established is considered paramount to the rights or privileges of the individual student.

A suspension under the law is usually for a short time or until the pupil complies with the conditions prescribed by the school authorities. Expulsion is ordinarily viewed as permanent, or for a substantial length of time.

Suspension and expulsion are usually considered to be within the discretionary powers of the board of education, however, in some instances teachers may also exercise this authority. Drury and Ray[6] point out:

> As a general rule, the power of suspension or expulsion is granted to a board of education, unless a particular statute provides otherwise. The courts have held however, that there are times under urgent situations where a teacher, principal, or superintendent would be justified in suspending a pupil pending submission of the case to the board of education. It has been held that a teacher has the inherent right to suspend a pupil pending submission of the case to the board of education. It has been held that a teacher has the inherent right to suspend a pupil pending board action where the interests of the school require it. However, where a statute expressly designates who has the power to suspend or expel a pupil, such takes away the right to exercise such power by any other person or officer.

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[6] Robert L. Drury and Kenneth C. Ray, Principles of School Law, (New York, 1965) pp. 52-53.

All of the cases analyzed in the previous sections of this study have dealt with the authority of school officials to expel or suspend pupils for the violation of rules and regulations concerning marriage, personal appearance, and membership in secret societies. An examination of some of the other rules and regulations wherein parents and students have challenged the school's authority to formulate and enforce will provide a more complete picture of the types of cases in which suspension and expulsion have been questioned.

In a review of the earlier cases Edwards[7] reports that boards of education have been upheld by the courts for suspending or expelling pupils for violation of the following rules:

1. a rule prohibiting pupils from leaving the school grounds during the noon recess without permission;
2. a rule prohibiting the pupils from taking lunch except at the school cafeteria or lunch brought from home;
3. a rule prohibiting the playing of football on the school grounds or under the auspices of the high school;
4. a rule prohibiting pupils from attending moving-picture shows except on Friday night and Saturday;
5. a rule requiring pupils to prepare a rhetorical exercise;
6. a rule providing for expulsion for absence or tardiness without sufficient excuse;
7. a rule requiring pupils to write compositions and to enter into debates.

He also cited the following rules as examples of those found by the courts to be unreasonable:

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[7]Newton Edwards, The Courts and the Public Schools (Chicago, 1955) pp. 601-602.

1. a rule requiring pupils to pay for school property which they have accidentally or carelessly destroyed;

2. a rule requiring a pupil to bring in firewood;

3. a rule making it obligatory upon a pupil to pursue a particular subject against the wishes of his parents;

4. a rule requiring pupils to remain in their homes and study between the hours of seven and nine o'clock in the evening;

5. a rule requiring pupils to participate in social dancing.[8]

In one of the more recent cases the Kentucky Court of Appeals was asked to rule on the reasonableness of the following rule: "No one, while in school, shall be allowed to enter the restaurant of Mr. Russell or any other business establishment in the town without permission from 8:15 a.m. until 3:00 p.m."[9] The rule was promulgated by the principal of a public school which was adjacent to the restaurant mentioned.

The parent of two of the pupils strongly objected to the regulation and persisted in coming to the school, getting his children and taking them to the cafe to eat. The principal suspended the children saying they would be reinstated when they agreed to comply. The parent went to court where the trial judge held the rule as being arbitrary, therefore void, and enjoined the board of education and the principal from enforcing it. The board of education appealed.

The Kentucky Court of Appeals, reversing the decision of the lower court, stated:

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[8] Ibid.

[9] Casey County Board of Education v. Luster, 282 S.W. (2d) 333 (Kentucky, 1955).

> It is essential that power be vested in some recognized agency in order to maintain discipline and efficiency in public schools. Those in charge of such instructions have a right to formulate such necessary rules as in their judgment will best promote the public good. Teachers and officials of public schools, who in a general way, stand in loco parentis to their pupils, are better qualified to judge the wisdom of such rules and regulations than are the courts. The only concern of the courts is to determine whether the school rules and regulations are reasonable or whether they are arbitrary. The law commits the government and conduct of the public schools, in general, to the discretion of the school board and places same beyond that of the patrons. The courts will not interfere with the discretion of school authorities in the rules they promulgate unless it appears they have acted arbitrarily or maliciously. ...Rule was not unreasonable or arbitrary but seemed to be for common good of all children.

A rule by a school district in Missouri that required students to pay an annual high school enrollment fee of eight dollars was challenged and was taken before the Federal Courts.[10] This was an action for an alleged civil rights violation by which the plaintiff, as a pupil in the school, refused to pay the required fee. She was expelled and brought action in the United States District Court for the Eastern District of Missouri where judgment was rendered in favor of the defendants. Plaintiff then appealed.

The United States Court of Appeals held that the alleged violation was not within the civil rights statute where, "...the plaintiff claimed no invalidity of state law or state constitutional provision." The opinion further pointed out that, "...the plaintiff's cause of action, if any, was one for invasion of personal rights for which the

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[10] Byrd v. Sexton, 277 F. (2d) 418 (Missouri, 1960).

state forums provided the proper avenue of relief," and that, "...Civil rights statutes are inapplicable."

Another case decided in 1960 was dismissed on technical grounds.[11] The problem arose when a high school student organized and led a boycott of students against milk with a certain label that was served in the school cafeteria. No evidence was given that showed the milk to be of inferior quality.

After much controversy, meetings between the principal and parents, and many heated and emotional arguments, the student was expelled by the principal. His parents then brought an action to enjoin the principal from, "threatening, coercing, and intimidating pupils," and to, "enjoin school board from employing the principal."

The plaintiff had not asked for a hearing before the county board of education as was his right, and which was the recognized procedure under the law. The Supreme Court of South Carolina dismissed the complaint saying, "...this is a matter of local controversy and plaintiff has not exhausted the available administrative remedies afforded by statute."

A school district in Texas adopted a rule, typical of many, that boards of education across the nation have seen fit to adopt, which required pupils to park their automobiles in the school parking lot upon arrival at school and to leave them parked until school was dismissed, unless special permission was granted to move them. One of the students persisted in parking her car at a friend's house a

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[11] Stanley v. Gary, 116 S.E. (2d) 843 (South Carolina, 1960).

short distance from school and driving it home during the lunch period. She was instructed to do so by her father. She was suspended from school and the father brought action against the school board for the wrongful exclusion of his daughter.[12]

The trial court upheld the contention of the girl's parents that the girl had been suspended under the provisions of a rule which was void and which was not within the authority of the board to make. The school district appealed the decision.

Testimony was presented which showed that the increase in the numbers of pupils driving their automobiles to school had created a danger for the pupils who were on the high school campus and the adjoining playground for the elementary school children. The appeals court, evidently convinced that the motives for enacting such a rule were for the protection of the children, reversed the decision of the lower court, saying in part:

> The regulation was not for the purpose of exercising authority over the use of public streets and highways at all [as suggested by appellees, reply point] but for the purpose of controlling the conduct of the students to the end that student pedestrians on the streets adjacent to the schools might be safe from student operated automobiles and that better order, decorum, and discipline might prevail at the noon recess. We do not believe they abused their discretion in doing so.

The court, in its opinion, made the following suggestion to the board of education:

> Since all parties assumed Marsha Andrews "drove her automobile to school" within the purview of the regulations in question we may also assume, but we can anticipate further

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[12] McClean Independent School District v. Andrews, 333 S. W. (2d) 886 (Texas, 1960).

> complications in the regulation as worded. For example, students might park their automobiles two or more blocks from school, or in town, walk to them and drive them during the noon recess. Technically, they might not be "driving automobiles to school" but would still be guilty of the principle acts the school authorities testified the regulation was passed to prohibit. ...We would respectfully suggest that the purpose sought might be more specifically stated by the following rule, or one of similar language: "School children shall not be permitted to drive automobiles during the lunch period nor any time after they arrive at school each day until they leave at ...p.m., unless by special permission of the school authorities."

A recent example wherein a Federal Court failed to uphold the action of a local board of education in a suspension case is found in Woods v. Wright.[13] This was a proceeding, on behalf of expelled or suspended Negro school children, to have the superintendent of schools enjoined from enforcing an order of the board of education directing expulsion or suspension of pupils, refusing to reinstate pupils, and penalizing or taking disciplinary action against pupils in connection with the order.

The pupils in question had participated in a demonstration against racial segregation and had been arrested for violating a city ordinance against parading without a license. The pupils were suspended and had the case taken to court. The United States District Court for the Northern District of Alabama denied a temporary restraining order and an appeal was taken.

Although the question became moot because the school term ended and the superintendent promised that proper action would be taken before

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[13] Woods v. Wright, 334 F. (2d) 369 (Alabama, 1960).

the start of school next year, the court still chose to render a decision. In its opinion the court said, in part:

> We are fully aware of the reluctance with which Federal Courts should contemplate the use of injunctive power to interfere with the conduct of state officers. But when there is a deprivation of a constitutionally guaranteed right the duty to exercise the power cannot be avoided. ...Where there is a clear and imminent threat of an irreparable injury amounting to manifest oppression, it is the duty of the court to protect against the loss of the asserted right by a temporary restraining order. We think such an order should have been entered in this cause by the district court.

One issue, which over the years had resulted in the suspension of several pupils, was resolved by the United States Supreme Court. This was the issue of rules prescribing compulsory flag salutes in the public schools. Sister M. Bernard Laughery[14] points out that seventeen cases centered around statutes or regulations providing for compulsory flag salute during school exercises were decided during the forties.

These cases varied only in details. All litigants were parents who belonged to the sect known as Jehovah Witnesses. All had children who had been expelled for refusal to salute the flag. There were many diverse and conflicting opinions handed down even after the first Supreme Court Decision in this regard was rendered. The confusion resulted mainly because the court had ruled on only one phase of the question: the propriety of the federal court's passing on an educational policy.

Justice Frankfurter, delivering the opinion of the court, said:

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[14]Sister M. Bernard Francis Laughery, Parental Rights in American Educational Law (Washington, D.C., 1952) p. 141.

> ...The precise issue, then for us to decide is whether the legislatures of the various states and the authority in a thousand counties and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious. To stigmatize the legislative judgment in providing for this universal gesture of respect for the symbol of our national life in the setting of conscience which the constitution protects, would amount to no less than the pronouncement of pedagogical and psychological dogma in a field where courts possess no marked and certainly no controlling competence....[15]

The courts, however, rendered no definite decision on three other phases of this question: whether the compulsory nature of the regulation violated the religious freedom guaranteed by the First Amendment; whether parents could be held for contributory delinquency of their minor children; or whether children thus expelled might be termed habitual delinquents.

The question was settled once and for all by the Supreme Court in West Virginia State Board of Education v. Barnette,[16] in 1943. This time the court considered the question on the basis of whether or not it constituted an infringement of the exercise of religious freedom guaranteed by the First Amendment. Justice Jackson, writing the opinion, stated, "It is not necessary to inquire whether nonconformist's beliefs will exempt from the duty to salute unless we first find power to make the salute a legal duty."

The opinion further pointed out that, "Compelling the salute from the unwilling does not promote national unity, instill patriotic

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[15] Minersville School District v. Gobitis, 310 U. S. 586 (Pennsylvania, 1940).

[16] West Virginia State Board of Education v. Barnette, 319 U. S. 624 (West Virginia, 1943).

impulses or serve an overriding national interest." Dealing compulsory flag salutes a death blow, Justice Jackson, in a closing passage of the opinion, stated:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. ...We think the action of the local authorities in compelling the flag saluate and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

All cases recently decided or then pending in the State Courts were made to conform to this decision.

Corporal Punishment

The problem of school discipline has always been one of the most controversial and widely discussed subjects connected with the public schools. Splawn[17] contends that, "Seldom does a day pass without the newspaper revealing a tale of conflict in some school which has been brought about because a parent objects to the type of discipline his child has received."

The methods of maintaining discipline are limited only by the imagination of the many teachers throughout the nation. However, the most controversial and perhaps, the most common method, is the use of corporal punishment. Flowers and Bolmeier[18] state that, "On the basis

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[17]Robert E. Splawn, "The School Board and Discipline," The Oklahoma Teacher, XLIX (September, 1964) p. 24.

[18]Anne Flowers and Edward C. Bolmeier, Law and Pupil Control (Cincinnati, 1964) p. 8.

of the number of court cases and amount of literature on the subject, corporal punishment would likely top the list...."

In the early days of American Education, corporal punishment was widely practiced and accepted as an important method of pupil control. Gummere[19] relates that, "Horace Mann, visiting a Massachusetts school of two hundred fifty pupils, found that during one week, three hundred twenty-eight floggings had been administered." He further points out that:

> In New York City in 1866, the number of beatings reported reached 130,000. Investigations compared attendance figures, examination scores, and pupil dismissals: the unbeaten children had improved remarkably over the beaten. ...That did it, the city soon outlawed corporal punishment. By the end of the century, beating of American school children had become much less frequent and fierce. In the 1920's and 1930's, the practice appears to have reached a low ebb.

Another source reports that, "Although there have been more court cases in the past concerning corporal punishment, it must be admitted that as a mode for enforcing pupil control, it has been lately less frequently employed than either suspension or expulsion."[20]

The late President Kennedy, as quoted in the N.E.A. Journal, expressed his views on the use of corporal punishment in the schools. "We have to think of our own children, and we are reluctant to see other people administering punishment to them. So I would not be for corporal punishment in the schools, but I would be for very strong

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[19]Richard M. Gummere, Jr., "On Beating School Children," The Nation, CCI (1965) p. 445.

[20]Flowers and Bolmeier, p. 8.

discipline at home so we don't place unfair burden on our teachers."[21]

Francis Keppel, at the time the United States Commissioner of Education, in response to a question on "Meet the Press," a nationwide television program, stated his views on corporal punishment by the following statement:

> My own feeling...is that the place for that sort [corporal punishment] is in the American home and not in the school. I know perfectly well that situations arise, particularly in the cities, where the principal presiding officer of the building should have such authority, but I am not in favor of giving it wholesale to teachers.[22]

A former superintendent of schools in Rochester, New York, states his opposition to corporal punishment quite emphatically:

> I'm against corporal punishment in the school, whether in the form of random diffuse cuffings or the full treatment. It is at best a short range measure. It is seldom an effective deterrent. The indignity of it, even more than the pain, stirs resentment that erects a barrier against persuasions that could lead a child toward acceptance of responsibility for his own conduct and it may do evil to those who practice it.[23]

An associate professor of education believes it may have a place but should be used only as a last resort effort before expulsion. He justifies his position in the following manner:

> Oftentimes a choice will have to be made between expulsion for the good of the group as whole and corporal punishment as a drastic substitute. When the latter decision is made, the reason behind it explained, and a friendly hand offered after it is over, a boy who is headed for trouble can many times be turned in his tracks. If corporal punishment fails, expulsion is still possible; when it succeeds,

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[21] Cited in, N.E.A. Journal, LII (September, 1963) p. 19.

[22] Cited in, Ibid., p. 20.

[23] James M. Spinning, "Considerably Less than Seldom," Ibid., p. 20.

> improvement begins sooner and is more likely to be lasting. A boy's life is important to all of us and especially to him. Sometimes desperate measures are needed to save it for him.[24]

It would appear from these statements that the use of corporal punishment in schools has practically disappeared. However, there is reason to believe that this is not the case. In fact, indications are that the practice may be increasing. The U. S. News and World Report[25] states that in the District of Columbia, where corporal punishment has long been prohibited, the superintendent of schools has requested authority for corporal punishment of insolent, unruly pupils. The superintendent's request stemmed from a citizens' committee's call for tougher treatment of problem pupils.

Another source indicates that there may be a movement toward harsher policies regarding corporal punishment. "Milwaukee and San Francisco have taken sterner positions in favor of corporal punishment practices. A third large city, Washington, D. C., is now trying to do the same thing."[26]

Gummere[27] is outspoken in his criticism of the use of corporal punishment while pointing out that, in his opinion, its use is definitely increasing. In a rather scathing attack on the practices, he states:

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[24]John A. R. Wilson, "Sometimes Yes," Ibid., p. 18

[25]"Corporal Punishment in D. C. Schools," U.S. News and World Report, LIV (March 4, 1963) p. 16.

[26]"Three Cities Move to Toughen Corporal Punishment Policies," Nation's Schools, LXXIII (September, 1963) p. 78.

[27]Gummere, p. 442.

> America has generally outlawed the manhandling of prisoners, soldiers, sailors, vagrants, lunatics, and animals. But not school children. On the contrary, more of them are being beaten today, in more schools, than were thwacked a generation ago. That is the guess, anyway, of knowledgeable observers of education....

It is interesting to note that, after expressing his views, Gummere was evidently deluged with protests from certain readers. He conferred with many of them and visited in some big city schools. His response after these confrontations vividly points out the complexity of the problem. He stated, in part:

> Though I've taught five years in the elementary schools and handled some excruciatingly difficult kids without force, I wouldn't last half an hour with any known system of discipline, in a classroom full of socio-economically deprived children; I take my hat off to those who can, with force or without it. ...The main purpose of my article was not to criticize teachers but to call for a more honest and practical study of discipline in its relation to the school and the society.[28]

In view of all the conflicting opinions and widespread interest, what do the teachers of the nation feel about the use of corporal punishment? In 1961, the Research Division of the National Education Association[29] attempted to answer this question. A scientifically selected sample of the nation's classroom teachers were asked this question, "Do you favor the judicious use of corporal punishment in the elementary-secondary schools?"

Ninety-six percent of the teachers polled responded to the questionnaire sent them. The results showed that almost seventy-two

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[28]Gummere, The Nation (1966) p. 28.

[29]Teacher Opinion Poll, "Corporal Punishment," N.E.A. Journal, L (May, 1961) p. 13.

percent favored corporal punishment, twenty-two percent opposed it, and approximately six percent said they didn't know.

Tyree[30] notes that New Jersey is the only state in the United States where corporal punishment in the schools is prohibited by state law. Even there he reports that on September 16, 1964, the Governor of New Jersey signed a bill which amends provisions of the law prohibiting corporal punishment. The bill permits teachers to use force against pupils in self defense, in situations threatening injuries to others, in taking weapons away from pupils and in protecting persons and property. It should be pointed out, however, this did not repeal the prohibition.

Another writer who researched extensively in the area of statutory law relative to pupil control found that:

> Corporal punishment of a refractory child is specifically permitted in only six states, though the use of such punishment could be implied where the school officials, by statute, stand in loco parentis. Not any of the statutes define what is included in the term "corporal punishment." [31]

Drury and Ray[32] sum up the accepted legal principles, regarding corporal punishment, that have been established and have evolved from the court cases of the past. They state:

> While school officials, including superintendents, principals, and teachers, are vested with broad discretionary

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[30]Marshall J. Tyree, "The Authority of Teachers to Administer Corporal Punishment," Current Legal Concepts in Education, ed. Lee O. Garber (Philadelphia, 1966) p. 309.

[31]Loughery, p. 79.

[32]Drury and Ray, p. 50.

> authority in the infliction of corporal punishment, the punishment must be reasonable and within the bounds of moderation; it cannot be cruel or excessive, and the official administering punishment must not act maliciously or watonly.
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> The law lays down no precise or exact rule as to what is excessive or unreasonable punishment. It is a question to be determined by the circumstances in each case. In the determination of whether the punishment is reasonable, the courts have held, however, that consideration must be given to the age, sex, and size of the pupil, his apparent physical strength and structure; that the type of instrument used should be one suitable and proper for the purposes; and that the punishment should be proportioned to the offense, the apparent disposition of the offender, and the influence of his example and conduct on others.

Court cases in the area experienced a notable decline in the period from 1900 to 1940. A National Education Association Research Bulletin,[33] reports that, "Most of the court cases, in which the teachers were alleged to have exceeded their authority in this respect, were decided prior to 1900. Two cases came up in the 1920's and two more in the 1930's...." It is interesting to note that since 1940 there has been increased court activity in the area, with twelve cases being reported since 1942.

A review of the cases that have appeared before the courts during the past twenty-five years should indicate whether the court is still being guided by the same principles. Such a review should also give some indication as to the type and severity of incidents that are currently being challenged in the courts.

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[33]"The Legal Status of the Public School Pupil," National Education Association Research Bulletin, XXVI (February, 1948) p. 26.

The first case to be reported in the period was heard by the Supreme Court of Errors of Connecticut.[34] The plaintiff was a ten-year-old boy who weighed eighty-nine pounds and was somewhat below average height for his age. The court noted that the boy had been imprudent with a lady teacher, had refused punishment and had refused to go to the principal's office when told to do so.

The principal happened by the room, entered, and was faced with the same behavior the boy had exhibited to the teacher. In an attempt to take the boy to the office, the principal faced so much resistance that he put the boy on the floor and sat astride him. The court also noted that the principal was a forty-six year old, physically strong man, five feet seven inches tall and weighed one hundred ninety pounds.

The boy complained that he suffered a skin burn or abrasion on his back and other possible injuries. The parent brought action for injuries alleged to have been sustained by the pupil as a consequence of an assault by the principal.

The court, granting the relief prayed for, stated that the, "... privilege or indulgence of the defendant's discretion terminated and that there was an excess of restraint imposed."

Another action, brought before the court in 1944, was an attempt to recover damages on a charge of assault and battery and illegal search.[35] A ten-year-old boy violated a school regulation by entering

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[34] Calway v. Williamson, 36 A. (2d) 377 (Connecticut, 1944).

[35] Marler v. Bill, 178 S. W. (2d) 634 (Tennessee, 1944).

a classroom during recess. He was seen entering the room and admitted he had done so. A dime was found missing from the room.

The boy was taken to the superintendent, a lady, where he was searched [defendant claimed the search was for the purpose of proving him innocent] and was moderately spanked with a ruler. The defendant said the punishment was given because he entered a classroom without permission.

The court, ruling in favor of the school officials, stated that "...the defendant acted with reasonable judgment and upon reasonable course without malice and for the good of the child as well as the school."

A New York Appeals Court was called upon to decide a case whereby the defendant, a principal, had been convicted of the crime of assault in the third degree upon information that he, "willfully, wrongfully, and unlawfully violated the Penal Law of New York by beating one Lester Hankinson, of the age of ten years upon his buttocks with a stick without just cause or provocation."[36] The boy had thrown or dropped a book deliberately from the balcony of the auditorium to the seats below.

The principal had punished the child in his office and in the presence of another teacher and his secretary. The boy had been placed on the chair in such a position as to enable the principal to strike his buttocks with a stick, which was apparently a ruler or piece of

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[36] People v. Mummert, 50 N.Y.S. (2d) 699 (New York, 1944).

yardstick. Two doctors testified and agreed that there were bruises or black and blue marks upon the boy.

The Appeals Court pointed out that:

(1) In order to convict for criminal assault, it is incumbent upon the prosecutor to prove beyond a reasonable doubt the commission of a willful and intentional assault.

(2) The principal of the school stood in the same position as would the parent if such parent were inflicting punishment upon the boy at home.

(3) The principal should have been permitted to put in evidence reports by the boy's teachers or other infractions or misbehavior of the boy.

(4) The sole question to be decided was whether the punishment inflicted was unreasonable in manner and immoderate in degree.

The opinion, reversing the decision of the lower court, further stated that:

> It does not seem to this court that it [the punishment] may be said to be unreasonable in manner; on the contrary, it has been quite the usual method of inflicting corporal punishment either by teacher or parent.... It remains then to determine whether the punishment was immoderate in degree ...it may be assumed, therefore, that the boy's buttocks were red and sore the first day and thereafter were black and blue. This would be the natural result of the administration of blows to those buttocks by means of a rod such as a ruler or yardstick. ...To be sure in such a case as this it is not required of the people that they produce "conclusive" proof. It is required, however, that they produce proof sufficient to satisfy beyond a reasonable doubt that the punishment inflicted was unreasonable in manner and was immoderate in degree. I cannot find that that burden has been sustained by the people from the evidence presented in this case. ...The judgment of conviction should therefore be reversed on the law and the facts and the information dismissed.

Another New York case, wherein a teacher was charged with assault in the third degree, is that of People v. Newton.[37] The complainant in this case was a male student who was a junior in high school, a truant, and had the general reputation of being a trouble maker at school. The defendant was a teacher and an athletic coach at the high school attended by the complainant.

Evidence presented indicated that the school was having an assembly program and all students who did not attend were instructed to leave the vicinity of the school. The defendant and other teachers were charged by the principal to check the school grounds and to enforce the regulations. The defendant encountered Hogan (the complainant) and some other students at a portable hot dog stand at a point where the school ground joins the street. The students were told to leave and all of them did except Hogan.

Evidence showed that Hogan had undoubtedly been drinking beer before the encounter with the defendant. Hogan contended that the defendant grabbed him, dragged him into the street, ripped his shirt, pushed him against a car and choked him with his hands and then pushed him into the bushes with one hand and choked him again.

The defendant testified that he grasped Hogan by the shirt with both hands and shook him. Hogan began to swear at him. At this time, the defendant put his fingers on the sides of the student's throat with his thumbs under his chin and applied pressure in an effort to stop the flow of swear words. Hogan, resisting, fell over into the hedge.

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[37] People v. Newton, 56 N.Y.S. (2d) 779 (New York, 1945).

A doctor testified that an examination of Hogan revealed that he had several marks on the throat including contusions and black and blue marks. The court, resolving the defendant of any guilt, stated:

> ...Taking into consideration the prior conduct of the complainant, the lack of malice on the part of the defendant, the nature of the offense of the pupil, his motive, the effect of his conduct on other pupils, and his size and strength, I find and decide that the guilt of the defendant has not been proven beyond a reasonable doubt. ...A school or school system is entitled to maintain discipline, just as much as the courts are entitled to maintain respect for laws and enforce the laws. Accordingly, if a school teacher cannot maintain respect for or obedience to a school rule or instruction, the teacher is entitled to and should maintain such respect or obedience with force, if necessary, and under proper conditions.

The facts of an Ohio assault and battery case are somewhat different from those reported above.[38] The complainant in this case was an eleven-year-old boy who had thrown a rock and hit a small girl, knocking off her glasses. The incident had occurred while the pupils were on their way to school.

The defendant teacher had spanked the boy severely from six to fifteen licks with a paddle of normal proportions. Testimony further showed that the boy had been an epileptic since infancy and that he had suffered three seizures since the spanking. His buttocks were black and blue for about five days after the punishment was administered.

Ruling for the defendant the court held that:

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[38] State v. Lutz, 113 N. E. (2d) 757 (Ohio, 1953).

> ...mere excessive or severe punishment on the part of a teacher does not constitute a crime unless it is of such nature as to produce or threaten lasting or permanent injury or unless it was administered with malice, either expressly or implied beyond a reasonable doubt. ...This court has examined the photographic exhibit of the boy's buttocks, and has carefully perused the record as to all bits of evidence concerning the severity of this paddling, and after weighing the evidence, we find nothing that shocks the sensibilities of this court or points to any fact of excessive severity or cruelty. School day memories of the average individual, including this court, will recall many experiences of corporal punishment more severe than this one properly given and of great benefit to the pupil and the school.

The court dismissed the evidence regarding the epilepsy of the boy by noting that, "...The record discloses no medical testimony indicating any causal connections between the paddling and the subsequent seizures."

A teacher may be discharged for incompetency on the basis of administering cruel and excessive punishment to a pupil. This situation was brought to light as a result of a decision rendered by the Supreme Court of Louisiana in 1953.[39] The plaintiff was a teacher who had been discharged by the school board after a hearing requested by a group of forty-two citizens. The charge was that the teacher had committed seventeen specifically listed acts of willful neglect of duty, incompetency, and dishonesty.

The teacher brought ordinary action seeking reinstatement and back salary from date of dismissal. The lower court affirmed the action of the school board and rejected the plaintiff's demands. The

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[39] Houeye v. St. Helena Parish School Board, 67 So. (2d) 553 (Louisiana, 1953).

plaintiff appealed on the basis that, (1) "The proceedings before the school board should be nullified on the grounds that the hearing was not private," and (2) "The evidence presented to the school board and in the subsequent litigation utterly failed to establish any evidence of acts of willful neglect of duty, dishonesty, or incompetency."

Regarding the first contention, the court held that the citizens preferring the charges had a right to be reasonably represented at the hearing in order that the evidence might be introduced in an orderly and effective manner. The permitted attendance of the group's attorney and one of its members was not an unreasonable representation and did not result in making the hearing public.

The court also ruled, relative to the second contention, that the evidence presented regarding punishment administered to one of the students alone was sufficiently grave to justify the school board's conclusion that plaintiff was incompetent to serve as principal and teacher. The court did not examine the evidence regarding the other sixteen acts that were listed.

Testimony revealed that the plaintiff had severely whipped a twelve year old male student with a piece of standard or regular sash cord eighteen inches long. The reason given for the whipping was that the boy had been absent from school. The boy was taken, by the parents, to the school board to reveal the results of the punishment. One of the board members testified, "He was the worst whipped boy I have ever seen."

Other testimony revealed the severity of the punishment and also revealed that the boy was black and blue for several days. At no

time did the plaintiff deny that the punishment was severe. He contended instead that he had the authority to render punishment if it was necessary and that there was no statute forbidding corporal punishment in Louisiana.

The court, in conclusion, stated:

> Even though teachers are not prohibited by statute from administering corporal punishment, it is certain that the corporal punishment must be reasonable and confined within the bounds of moderation. It must not be cruel, brutal, excessive—as was that administered by this plaintiff to the pupil, Floyd Courtney.

The case of Suits v. Glover[40] is an example of the general principle whereby the court takes into consideration the health and size of the complainant and the attitude and motive of the defendant. The case was a tort action by appellant claiming damages in three counts of assault and battery.

Testimony revealed that corporal punishment was administered to the appellant because of acts of insubordination, boisterous conduct, and scuffling in the halls of the school. The evidence was conflicting as to the type of instrument used. The appellee's evidence tending to show that the instrument used was a ping pong paddle and the appellant's tending to show he was whipped with a slat from an apple crate. A medical expert testified that there was no evidence of permanent injury to the student, who was eight years old, well-developed, fat and in good health.

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[40] Suits v. Glover, 71 So. (2d) 49 (Alabama, 1954).

The court noted that the appellee was, "...in no way angry or aggravated with the appellant when he administered the punishment." Upholding the decision of the lower court and denying a new trial the court stated:

> A schoolmaster is regarded as standing in loco parentis and has the authority to administer moderate correction to pupils under his care. To be guilty of assault and battery, the teacher must not only inflict on the child immoderate chastisement, but he must do so with legal malice or wicked motives, or he must inflict some permanent injury. In determining the reasonableness of the punishment or the extent of malice, proper matters for consideration are the instrument used and the nature of the offense committed by the child, the age and physical condition of the child and the other attendant circumstances.

A New York Court held that the slapping of a student by a teacher was not necessarily unreasonable or immoderate punishment.[41] The case was instigated when a teacher struck a twelve year old student on the cheek.

A digest of the testimony offered by both sides makes it appear that on the day of the incident, the child was slouched at his desk and refused to follow the instruction of the teacher. He was then forcibly removed from the room and taken to the gymnasium. Again, the child refused the direction of the teacher, at which time he was slapped on the cheek. There is a conflict as to whether the teacher struck the boy with an open hand or a clenched fist. A medical doctor testified that his records disclosed that the boy suffered from what is commonly known as a bloody nose and had a scratch on his back.

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[41] People v. Baldini, 159 N.Y.S. (2d) 802 (New York, 1957).

Testimony further revealed that the boy had a record in school for being unruly and had, in the past, disturbed the orderly conduct of the classroom.

The court, ruling for the defendant, stated:

> The court has examined the testimony minutely, and has come to the conclusion that there was no malice on the part of the defendant in punishing the complainant. Eliminating the question of malice, and in evaluating the conduct of the teacher, the court finds that in light of the complaint, the actions of the teacher were not such that would warrant a conviction of assault in the third degree, and I find that the guilt of the defendant has not been found beyond a reasonable doubt.

The opinion further pointed out:

> It is the thought of the court that the teacher must be supreme in his classroom, like any other person placed in authority, he must use the authority vested in him wisely, and never excessively. The court feels that the legislature has cloaked the teacher with discretion so that he may maintain the authority and decorum necessary for the proper conduct of the classroom. Instruction can only be properly and successfully given by one who has the authority over his pupils and who has their respect. The teacher is vested with the right to give orders and as a concomitant of the same he should have the sanctions to enforce them.

The case of Andreazzi v. Rubano[42] presents a situation whereby a teacher was found not liable for damages because of alleged assault and battery even though the teacher had not followed the provisions of a school regulation which stated that all punishment must be administered by the principal of the school. The teacher, in this instance, had slapped a fifteen year old boy across the face with the back of his hand after the pupil had assumed a belligerant attitude and uttered

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[42] Andreazzi v. Rubano, 141 A. (2d) 639 (Connecticut, 1958).

a vulgar remark. The teacher testified that he believed the pupil intended to strike him.

The court viewed the striking of the student as "corrective action" rather than punishment and relieved the teacher of all liability, stating:

> ...the defendant acted, not for the purpose of inflicting punishment, but to restore order and discipline. It is manifest from all the facts and circumstances that unless the defendant had taken prompt and effective action, he would have been humiliated in the eyes of his pupils and the order and discipline of the classroom would have been seriously affected.

The Supreme Court of Iowa in the case of Tinkham v. Kole,[43] recognizes the legal principle that the question of reasonableness is one of fact for the jury and not one of law for the court. This was an assault and battery case brought by a thirteen-year-old boy.

The boy was slow in removing a pair of gloves from his hands when ordered to do so by the teacher. There was apparently much noise and general confusion in the classroom. The teacher came to the boy's seat and slapped him several times across the face.

Medical evidence tended to indicate that the boy suffered a ruptured ear drum as a result of the blows. Testimony also revealed that at no time did the boy talk back and he contended his slowness in removing the gloves was a result of their tight fit.

The trial court dismissed this case. In doing so the trial judge gave some examples of what he considered cruel and unreasonable punishment.

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[43] Tinkham v. Kole, 110 N. W. (2d) 258 (Iowa, 1961).

> This court has about concluded this is not a case which should be submitted to a jury. That we should stop this foolishness right here and now. The teacher had a right to discipline the student and to use such force as was necessary to do so...We must first determine whether the punishment was reasonable regardless of the consequences. ...I don't believe it was unreasonable any more than it would be for a parent to do something of this kind if his child disobeyed him. ...If we had a situation where parents chain their kids to a bed and leave them there for days because they run off; that is unusual, unreasonable punishment. Where a father burned his kid's fingers with a cigarette...; that would be unreasonable, cruel punishment. But it was the natural things for this teacher to do where this boy had been causing trouble, ...to slap him back and forth across his face.

The Supreme Court of Iowa reversed and remanded the case to be tried by a jury saying:

> We are not called upon to decide whether the question of reasonableness of particular punishment would be for a jury in every conceivable case. Our problem is whether under the facts and circumstances here a jury question on such reasonableness is presented and as indicated at the outset, this depends upon whether reasonable minds might fairly so conclude. It is significant that able, industrious counsel for the defendant cite no decision of any court which holds a jury question of reasonableness of punishment in a case of this kind was not presented. Nor have we found such a precedent. In all to which our attention has been called the question of reasonableness was treated as one of fact for the injury, not...as was done here...as one of law for the court.

The court continued by noting:

> Fair-minded persons might also conclude that punishment is unreasonable even though much less cruel than chaining a child to a bed and leaving him there for days or deliberately burning his fingers. ...We can readily agree that proper discipline of children is of vital importance and disciplinary lapses seem to be widespread, with regrettable consequences. But, we repeat, the reasonableness of the punishment here was a quesstion of fact for the jury, not one of law for the court.

A case decided by the Supreme Court of Indiana in 1963 holds important implications for school teachers if it becomes accepted as

a precedent.[44] The case involved a teacher in the State School for Mentally Retarded Children who had lightly paddled one of the students. The school had a regulation forbidding paddling and the teacher was fired by the Personnel Board.

The teacher asked for judicial review, as was provided by statute, and was reinstated. The Personnel Board appealed.

The Supreme Court upheld the lower court and ordered the board to reinstate the teacher. In his concurring opinion Judge Arterburn stated:

> A teacher and a parent have not only the right but the obligation to discipline a child, if necessary, using corporal punishment, for the good of such child, as well as the protection of third parties offended or injured by the actions of such child. The failure to exercise such disciplinary action where the occasion requires it is condemned by the law as much as an excessive and cruel punishment beyond requirements. ...A teacher has no choice in an orderly society but to exercise physical force in stopping and removing recalcitrant pupils and inflicting corporal punishment, not only to the offending child for its benefit, but as an example to the other pupils. ...I might add that I have serious doubts that a teacher confronted with such a situation and responsibility under the law for maintaining order and a respect for authority before a classroom of pupils, can be deprived by a "rule," of the right to use physical force to eliminate such a disturbance. As long as teachers or parents are obligated under the law to educate, teach and train children, they may not be denied the necessary means of carrying out their responsibility as such teachers or parents.

The possible significance of this opinion for teachers and school authorities has been noted by one of the leading authorities of school

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[44] Indiana State Personnel Board v. Jackson, 192 N. E. (2d) 740 (Indiana, 1963).

law in the nation. Lee O. Garber[45] referring to the above opinion, stated:

> If this dictum is accepted as precedent, it means that when a statute places teachers in loco parentis to their pupils, a school board has no authority to enact a rule prohibiting corporal punishment, and a teacher who violates such a rule does so with impunity and cannot be held guilty of unsubordination.

In a recent (February, 1967) case, Frank v. Orleans Parish School Board,[46] a teacher and his school board were held liable for excessive punishment of a pupil. The decision was rendered by the Fourth Circuit Court of Appeals of Louisiana.

According to the evidence the boy involved was sent from the basketball court by his teacher. The student attempted to return to the court and was banished again. On the third attempt the boy was chased around the gymnasium by the teacher. When he was caught, he either fell or was thrown to the floor and suffered a fractured arm.

There was conflicting evidence as to the incident. The student said the teacher grabbed him, lifted him from the floor, shook him against the bleachers and released him so suddenly that he fell violently to the floor. The teacher contended that the boy tried to strike him and that he grasped his arms in order to restrain him.

It was shown that the teacher was about thirty-four years old, five feet, eight inches tall, and weighed approximately two hundred

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[45]Lee O. Garber, "Where the Courts Took the Schools in 1964," The Nation's Schools, LXXV (March, 1965) p. 86.

[46]Frank v. Orleans Parish School Board, 195 So. (2d) 451 (Louisiana, 1967).

thirty pounds. The boy was about fourteen years old, four feet, nine inches tall and weighed one hundred pounds. The court, noting this difference in size, said, "It taxes our credulity to believe that Henerson (the teacher) in good faith, actually believed that his physical safety was endangered by a blow from Reginald (the student)." The court went on to state that, "Henderson's actions in lifting, shaking and dropping the boy were clearly in excess of that physical force necessary to either discipline or to protect himself, and subjects the defendants to liabilities for the injuries incurred thereof."

The court pointed out that the decision was limited to a finding of fact by the trial court that the teacher had gone beyond the degree of physical effort necessary to protect himself or discipline the boy. As to the legality of corporal punishment, the court said:

> We expressly refrain from making any judicial pronouncement as to whether it is objectionable per se for a teacher in a public school to place his hands upon a student: common sense would dictate, however, that the individual facts and environmental characteristics emanating from each case would disclose both the right and the reasons for a teacher to do so, and the degree of force, if any, which may be used under particular or peculiar circumstances. A general rule in the negative relative to this problem may encourage students to flaunt the authority of their teachers. On the other hand, a general rule permitting physical contact between teacher and student in any instance, without qualification, would obviously encourage the one who occupies a position of superiority to take advantage of those who are in a less favorable position, since they are subject to their authority.

Summary

The pupil's right to attend the public schools is not absolute. It is generally accepted that the enjoyment of the right is conditioned by the pupil's compliance with the laws of his state and with the

reasonable rules and regulations promulgated by the school authorities. In most cases the courts consider the decorum of the classroom and the efficient operation of the educational system to be paramount to the personal rights of the individual.

The authority of school personnel to enforce their regulations and punish offenders is based primarily on the legal principle of in loco parentis. The criteria for determining the legality of the regulations and the methods of enforcing them is that of resonableness.

The rules and regulations themselves are seldom contested in the courts. It is usually the methods employed in enforcing them which frequently cause the actual litigation. Schools and teachers use a variety of means for enforcing their regulations, however, on the basis of the number of court cases and amount of literature on the subject the principle methods are suspension, expulsion, and corporal punishment.

Suspension and expulsion are usually considered to be functions of the board of education, however, there are some instances wherein teachers may also exercise this authority. Suspension is usually thought of as being for a short period of time, or until the pupil complies. Expulsion is permanent, or for a substantial period of time.

In addition to the court cases discussed in previous sections in this study, six other cases involving suspension of students were reviewed in this chapter. Of these cases, one was dismissed on technical grounds, in three of them the suspension of the students were upheld by the courts, and in two cases the courts decided the school officials had exceeded their authority.

Suspension of students for the violation of the following rules was upheld by the courts:

(1) a rule prohibiting students from entering restaurants and other business establishments during school hours;

(2) a rule requiring students to pay an eight dollar enrollment fee;

(3) a rule prohibiting students from moving their automobiles during the hours school is in session.

The suspension of students for the following reasons was held to be unreasonable:

(1) refusing to participate in the recitation of the flag salute;

(2) suspension without a hearing for participation of students in a civil rights demonstration.

The United States Supreme Court settled the issues of compulsory flag salutes by declaring this practice to be unconstitutional. This decision climaxed a period that saw a flurry of activity revolving around this question and resulting in a variety of different rulings.

The use of corporal punishment in the schools is perhaps the most controversial of all aspects of pupil control and punishment. Prior to the advent of the twentieth century, the use of corporal punishment was widespread. For the next forty years the practice seemed to decline. However, indications are that its usage may be increasing at the present time in spite of an outspoken number of critics.

In general, school officials are vested with broad discretionary authority in the administration of corporal punishment. Essentially, in order for corporal punishment to be legal, it must be reasonable in

the eyes of the judiciary. In determining reasonableness the court will take into account: the age, sex, and physical strength of the pupil, the nature of the offense, the pupil's past conduct at school, the effect of the pupil's conduct on other students, the disposition and motives of the person administering the punishment, and the circumstances and conditions surrounding each individual case.

Twelve cases involving the use of corporal punishment have been decided by the courts since 1942. In eight of these cases the administration of corporal punishment by the teacher was found by the courts to be reasonable and within the bounds of moderation. One of the cases was reversed and remanded for a jury trial because the court ruled that the question of reasonableness was one of fact for the jury and not one of law for the courts.

In only three of the cases reported did the courts rule that the punishment rendered was excessive and beyond the bounds of moderation. The following types of punishment were found to be unreasonable:

(1) an instance wherein a principal weighing one hundred ninety pounds threw an eighty-nine pound, ten-year-old pupil to the floor and then sat astride him in an effort to subdue the pupil;

(2) an instance wherein a teacher punished a twelve-year-old boy with a piece of sash cord for being absent;

(3) an instance wherein a two hundred thirty pound teacher grabbed a fourteen-year-old, one hundred pound boy, shook him against the bleachers, lifted him from the ground and then dropping him with such force that the boy suffered a broken arm.

One recent case reviewed expressed the opinion that teachers had not only a right to administer corporal punishment when the situation warranted it, but an obligation to do so. This opinion also indicated there was doubt that a school board had the authority to pass a

resolution prohibiting corporal punishment if the statutes had placed a teacher *in loco parentis*.

Teachers who administer corporal punishment should be aware that they may face the following types of actions: conviction of assault and battery and fined; conviction of assault and battery with liability for damages resulting thereof; and the loss of their jobs because of incompetency. Members of boards of education may also be held liable for damages if a teacher they have employed has administered excessive punishment.

The final chapter of the study pinpoints twenty-six conclusions reached by the writer and offers six recommendations for those involved and interested in the control of pupil personnel in the public schools.

CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

The public school system of education in the United States has its basis in the law. Although largely administered on a local basis, education is in legal theory a function of state government. The primary purpose for which public schools are created and supported is not for the benefits derived by the individual student but, rather, to provide an educated citizenry for the benefit of society.

There are four basic forms of school law. They are: constitutional provisions, legislative enactments, administrative regulations, and case law. The first three types constitute that which is termed the written law and the last one, which consists of judicial decisions, is termed the unwritten law.

Written law provides effective guidelines for public school administrators, but it has a certain rigidity about it. It is not possible to establish written law for every conceivable situation. The ever-changing structure of life creates the need for new rules. In our legal system decisions of courts cover such gaps. The elaboration of new rules is an inescapable concomitant of the judicial process.

Perusal of current literature, the amount of legislation, and the number of recent court cases tend to indicate widespread interest and

controversy in problems related to the control and management of students in the public school. These sources appear to identify those problems associated with personal appearance, married students, secret societies, and the methods used to enforce school regulations as the ones most pressing and controversial at the present time.

The courts have determined that attendance in the public schools is not a guaranteed right to be exercised exclusive of all other considerations, It is, instead, a privilege which may be claimed by those young people who are willing to comply with the provisions of the constitution and statutes of the state and to submit to such reasonable rules and regulations as the local school authorities may adopt. The power of school authorities to control the pupils within their charge is for the most part derived from their broad discretionary grant of power conferred upon them by the state legislature. The power of the local board of education is limited only by constitutional provisions, legislative enactments, and jucicial interpretation of the law.

To help them cope with the myriad of problems that faces them daily, boards of education and school administrators have found it necessary to adopt policies, enact rules and regulations, take certain actions regarding pupil control. In most instances these actions require individuals to relinquish to some degree their personal freedom for the welfare of others and the general well being of the school.

Lacking specific statutes to guide their actions, school boards often formulate rules or initiate corrective measures that are challenged as being unreasonable, oppressive, arbitrary, or illegal. Extreme instances of disagreement usually wind up in the courts.

When the courts are called upon to adjudicate a disagreement, they are reluctant to interfere with the operation and management of the schools by local authorities unless there is a clear abuse of authority. In making disposition of a case the courts give judicial cognizance to the opinions of other courts in their jurisdiction and other jurisdictions in similar cases. The courts will not pass upon the wisdom or expediency of the rule in question but will consider the circumstance of each case in the light of the authority of the school officials to enact the rule, the constitutionality of the rule, and the reasonableness of the action taken.

Any conclusions to be drawn on the basis of cases reviewed must be limited by the influence of earlier precedents, jurisdictional and statutory differences, and the certainty that factual situations yet to arise will pose different legal questions. Within these limitations the following general conclusions concerning recent developments in legal aspects of the regulation of student conduct can be drawn.

1. In most instances the courts will uphold the action of school boards in attempting to maintain and promote good order and discipline in the public schools unless there is a clear abuse of authority.

2. It is doubtful that school officials have the authority to prescribe a certain type of dress to be worn by public school students to school or to a particular class in school (i.e., physical education).

3. Unconventional clothing which has an adverse effect upon the discipline of the school may be prohibited.

4. School authorities may not prohibit the wearing of freedom buttons or other items for the purpose of symbolic expression, unless it can be clearly shown that the wearing of such articles is detrimental to the discipline and decorum of the school.

5. The courts, in all reported cases, have upheld the authority of school officials to prohibit the attendance of male students wearing extreme or exaggerated hair styles.

6. The written opinions of the justices in the cases dealing with dress and personal appearance tend to emphasize that no general principle can be construed and that each case must be decided on its own merits. There is some evidence that the courts are becoming more concerned with the individual rights of the student than they previously were.

7. Compulsory attendance legislation is not applicable to students who marry.

8. Students may not legally be excluded from school solely on the basis of marital status.

9. Married students who become mothers may not be permanently excluded from school.

10. A pupil who becomes pregnant may be suspended from school during the period of her pregnancy.

11. School authorities may limit the participation of married students in extracurricular activities.

12. In the presence of supportive legislation, boards of education may suspend or expel from the public schools any student who holds membership in secret societies.

13. In the absence of specific statutory authority, local school authorities may limit the participation of fraternity and sorority members in extracurricular activities.

14. Regulations extending the ban on secret societies into the summer vacation period may not be upheld by the courts and is likely to be considered an invasion of parental authority.

15. Local school officials may adopt a regulation prohibiting students from entering business establishments during the school day and may legally suspend students who violate the regulation.

16. In the absence of specific statutes to the contrary, local school authorities may require students to pay a nominal enrollment fee.

17. A regulation which prohibits students from driving their automobiles after they have arrived at school in the morning until school is dismissed that afternoon may be upheld by the courts.

18. School authorities may not legally suspend students who refuse to participate in the salute to the flag.

19. School authorities may not legally suspend, without a hearing, students who violate a city ordinance by participating in a civil rights demonstration.

20. Only one state prohibits the use of corporal punishment in the public schools. In the others the courts tend to uphold the authority of teachers to administer corporal punishment that is moderate in degree, reasonable in nature, and if the person administering the punishment has not acted maliciously or in anger.

21. The question of reasonableness of punishment is one of fact to be determined by a jury, not one of law for the courts.

22. In determining the legality of corporal punishment administered the courts will consider the age, sex, size, health, the nature of the offense committed, and the effect of the actions of the offender on the rest of the student body.

23. Teachers who administer corporal punishment may be convicted of assault and battery and fined; be held liable for any damages as a result of the punishment; and be dismissed from their positions on the grounds of incompetency.

24. Members of boards of education may be held liable if a teacher they have employed administers excessive and unreasonable punishment.

25. There is some doubt that school authorities may legally deny a student to be represented by an attorney at guidance conferences called for the purpose of determining the pupil's future educational opportunities.

It is important to note that cases involving pupil control clearly indicate that the standards for rule-making and enforcement are much broader for children and youth than they are for adults. School officials dealing with adolescents are permitted greater latitude in adoping regulations to meet existing conditions than law enforcement agencies are tolerated in dealing with adults. This situation imposes an awesome responsibility upon those involved in school administration. Local school authorities may have more opportunity than they desire to teach by demonstration such concepts as freedom of expression, respect for the rights of others or respect for authority.

The state of the law at present seems to be that rules and regulations for controlling pupil personnel will be upheld unless constitutional or statutory rights are clearly invaded. However, the courts appear to be becoming increasingly concerned with deciding how much infringement on the individual rights of the student can be tolerated in order to insure proper discipline and decorum of the classroom.

Recommendations

Although it presently appears that the courts' concept of reasonable rules and regulations in the area of pupil control tend to mirror the reflections of local school authorities, schoolmen should not be lulled into complacency by generalities and broad principles. Administrators and board of education members should be well informed about the factual situations in their community, the statutes, and the effect of their policy statements when contemplating rules for the regulation of the student body.

The current nationwide movement toward, and interest in, individual civil rights, the liberal interpretation the courts seem to be placing on the range of these rights in all other areas except perhaps public school pupil control, the possible decline in the importance of the concept of *in loco parentis*, and the entrance of such organizations as the American Civil Liberties Union on behalf of public school pupils have made the task of school administration more complex and complicated. No longer may school authorities formulate a rule or regulation simply because it is their personal opinion that it is desirable. Instead they would be better advised to have some tangible evidence

that a problem actually exists and that their regulation will produce the solution desired.

In view of these considerations the following recommendations are made for the benefit of those persons concerned with the management and control of the student population in the public schools. These suggestions are admittedly somewhat subjective in nature and it is acknowledged that they will undoubtedly meet with some disagreement. Nevertheless, it is contended that they are based upon legal principles as well as principles of sound public school administration.

1. Make certain that all rules and regulations are in conformity with constitutional and statutory provisions.

2. The formulation of rules and regulations should be predicated on the basis of real and apparent problems. It is well to be cognizant that it is possible for excessive regulations to become so rigid as to create problems rather than offer solutions.

3. When considering problems relative to control of dress and personal appearance, schoolmen would do well to remember that styles and customs tend to change. Unless it can be shown that the current fads and styles of public school students are, indeed, detrimental to the well being of the school as a whole and not merely in conflict with the personal tastes of the local school authorities, administrators should enter into this type of regulation cautiously.

4. Regulations tending to discriminate against married high school students are becoming increasingly more difficult to justify. No rule that has the effect of permanently excluding students on the basis of marriage alone should be formulated. The participation of married

students in extracurricular activities should be limited only when it is evident that such participation is injurious to the morale and conduct of the school.

5. Rules and regulations designed to curb secret societies are useless unless there is evidence of their existence and harmful influence in the community. If such evidence is apparent, stern measures should be enacted to prohibit their operation.

6. Despite the judicial sanctions of such punitive measures as suspension and corporal punishment, they should be employed only after less controversial methods have been tried and have failed.

It should, however, be emphasized once again that public schools owe their very existence to the society that has created them and that they were created primarily for the benefit of such society rather than the benefit to be derived by the individual. To achieve the aims for which they were established public schools must have reasonable rules and regulations under which to operate. Someone must attempt to determine the amount of personal liberty that may be allowed without infringing upon and interferring with the efficient and proper conduct of the school system as a whole. This, in effect, is the basic problem that confronts the legislature, the boards of education, and school administrators in considering the adoption of statutes, policies, and regulations relative to pupil management and control.

The public school administrator can best prepare himself for his role in this process by becoming knowledgeable in the legal aspects of pupil control. In addition to this, he must become acutely aware of the customs, values, habits, and traditions of his school and community. The fact that an act is legal is no assurance that it is necessary or

desirable. Legal principles are best applied when they are used in such a manner so as to meet a definite need that will best serve the welfare of the pupil, the school, and the community.

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TABLE OF TERMS

Abrogate - a judicial act that annuls or revokes a previously held doctrine.

Action - a proceeding in court by which one party complains against another for the enforcement or protection of a right, the redress of a wrong, or the punishment of a public offense.

Adjudication - a judgment or decision.

Affirm - to make firm; to establish. To ratify or confirm the judgment of a lower court.

Appellant - the party who makes an appeal from one court to another.

Appellee - the party against whom an appeal is taken.

Assault - to threaten to strike or harm. If a blow is struck it is battery. Assaults are common or aggravated, the former being those for which no special punishment is prescribed by law; the latter being made with an intent to commit some additional crime, as rape, murder, or robbery. An assault is in civil law a tort, for which damages are recoverable.

Battery - the unlawful beating or other wrongful physical violence, including every touching or laying hold, however trifling, of another's person or clothes, in an angry, insolent or hostile manner. There can be an assault without battery; battery always includes assault. The two words are usually used together.

Case Law - a body of law created by judicial proceedings.

Civil Action - an action which has for its object the recovery of private or civil rights, or compensation for their infraction.

Class Suit - a case in which one or more in a numerous class, having a common interest in the issue, sue in behalf of themselves and all others of the class.

Common Law - legal principles derived from usage and custom, or from court decisions affirming such usages and customs, or the acts of Parliament in force at the time of the American Revolution, as distinguished from law created by enactment of American legislatures.

Concurring Opinion - an opinion written by a judge who agrees with the majority of the court as to the decision in a case, but has different reasons for arriving at that decision.

Constitution - the fundamental law of a state or nation.

Corporal Punishment - punishment inflicted directly on the body, as spanking, slapping, or flogging.

Damages - the amount claimed, or allowed, as compensation for injuries sustained through the wrongful act or negligence of another.

Defendant - the party against whom relief or recovery is sought in a court action.

Dissenting Opinion - an opinion disagreeing with that of the majority, handed down by one or more members of the court.

Due Process of Law - the exercise of the powers of government in such a way as to protect individual rights.

Enjoin - to require a person, by writ of injunction from a court to equity, to perform, or to abstain or desist from, some act.

Equity - fairness; the field of jurisprudence differing in origin, theory, and methods from the common law.

In Loco Parentis - in place of the parent; charged with some of the parents' rights, duties, and responsibilities.

Infringement - an encroachment upon or invasion of one's rights.

Injunction - a prohibitive writ issued by a court of equity forbidding the defendant to do some act he is threatening or forbidding him to continue doing some act which in injurious to the plaintiff and cannot be adequately redressed by an action at law.

Judgment - decision of the court, usually that part involving the payment of the damages.

Liability - legal responsibility.

Majority Opinion - the statement of reasons for the views of the members of the court in a decision in which some of them disagree.

Mandamus - a writ to compel a public body or its officers to perform a duty.

Negligence - want of care.

Per Curium - by the court as a whole.

Petition - written application or prayer to the court for the redress of a wrong or the grant of a privilege or license.

Petitioner - the one who presents a petition to the court; the same as the plaintiff in other kinds of cases.

Plaintiff - person who brings an action.

Plenary - complete power, usually applied to legislatures over matters within their entire jurisdiction.

Police Power - the power of legislatures to pass laws regulating and restraining private rights and occupations for the general welfare and security.

Prayer - the part of the petition which requests the court to grant the relief sought.

Precedent - a decision considered as furnishing an example or authority for an identical or similar case afterward arising on a similar question of law.

Relator - one on whose complaint certain writs are issued; for all practical purposes the plaintiff.

Relief - the legal remedy for wrongs.

Remand - to send a case back to the court from which it came for further proceedings there, after an appellate decision.

Respondent - the defendant in certain types of cases.

Restrain - to prohibit from action.

Right - a power or privilege in one person against another.

Stare Decisis - principle that when a court has made a declaration of a legal principle it is the law until changed by a competent authority; to stand by decided cases.

Statute - an act of the legislature.

Tort - legal wrong committed upon the person, reputation, or property of another.

Ultra Vires - acts beyond the scope of authority.

VITA

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